

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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Court of Appeals of the District of Columbia.

OCTOBER TERM, 1914.

No. 2713.

152

MARY L. DIXON, APPELLANT,

vs.

GREAT FALLS AND OLD DOMINION RAILWAY COMPANY,
A CORPORATION.

AND

No. 2714.

ROBERT A. DIXON, APPELLANT,

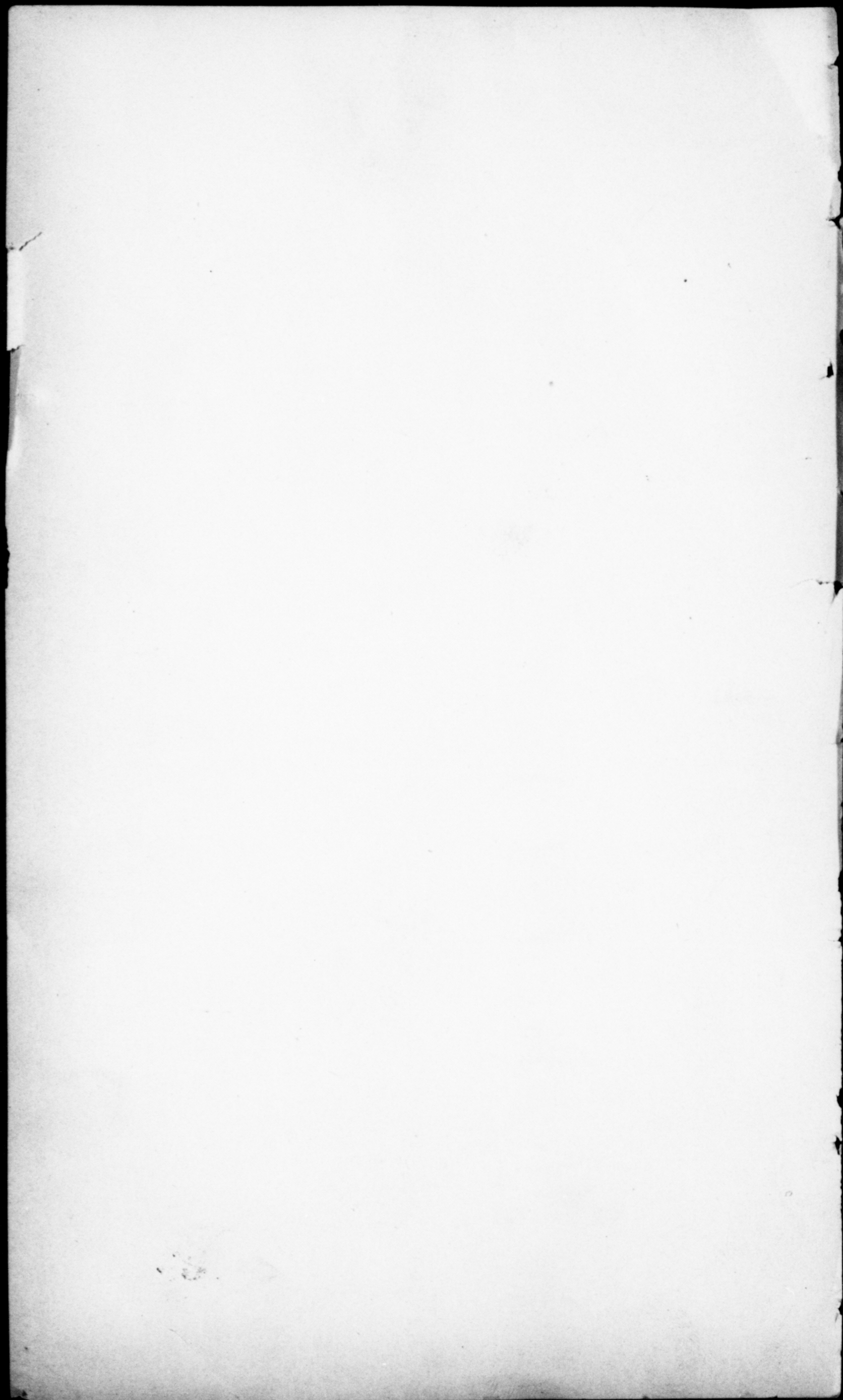
vs.

GREAT FALLS AND OLD DOMINION RAILWAY COMPANY,
A CORPORATION.

APPEALS FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

FILED JUNE 27, 1914.

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A CORPORATION, APPELLEE.

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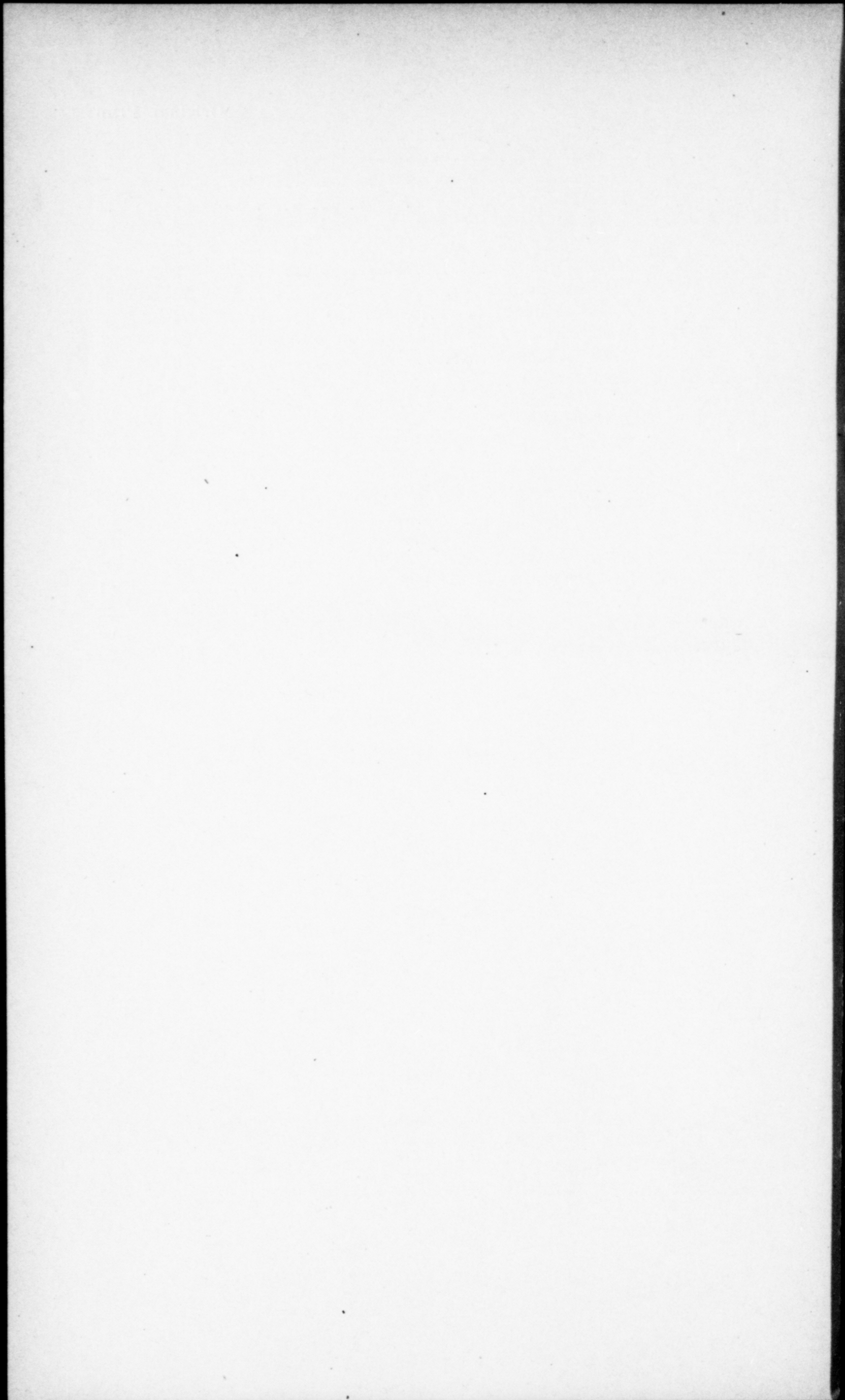
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In the Court of Appeals of the District of Columbia.

No. 2713.

MARY L. DIXON, Appellant,
vs.
GREAT FALLS AND OLD DOMINION RAILWAY COMPANY, a
Corporation,

and

No. 2714.

ROBERT A. DIXON, Appellant,
vs.
GREAT FALLS AND OLD DOMINION RAILWAY COMPANY, a
Corporation.

a Supreme Court of the District of Columbia.

Law. No. 50652.

MARY L. DIXON, Plaintiff,
vs.
GREAT FALLS & OLD DOMINION RAILWAY COMPANY, a Corporation,
Defendant.

Law. No. 52293.

ROBERT A. DIXON, Plaintiff,
vs.
GREAT FALLS & OLD DOMINION RAILWAY COMPANY, a Corporation,
Defendant.

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

Declaration.

Filed June 9, 1908.

In the Supreme Court of the District of Columbia.

Law. No. 50652.

MARY L. DIXON, Plaintiff,

vs.

GREAT FALLS & OLD DOMINION RAILWAY COMPANY, a Corporation,
Defendant.

The plaintiff, Mary L. Dixon, sues the defendant, the Great Falls and Old Dominion Railway Company, a corporation, for that, heretofore, to wit, on or about August 25th, 1907, the defendant company, having an office and place of business in the District of Columbia, was the owner or lessee of, and controlled, managed, and operated a certain electric railway for the transportation of passengers in the District of Columbia and State of Virginia, and in connection with its said railway and transportation of passengers, had established certain pleasure grounds or an amusement park at Great Falls, in the said State of Virginia, which was then and is now the furthestmost terminal station from the District of Columbia of said defendant company's electric railway; that on the day aforesaid large numbers of people were brought by said defendant company's trains to said pleasure grounds and amusement park, and it then and there became and was the duty of the said defendant company to supply and have a sufficient number of cars, and use them with such frequency as to prevent undue and improper crowding thereof, or of its station platform at said Great Falls Station; that it

2 furthermore became and was the duty of said defendant company to have a properly authorized officer of said company on or about said station platform, who would assume control of and regulate any large body of people when assembled thereon to take returning cars in the evening for their different destinations; that after day light had passed, and darkness had set in, it also became and was the duty of said defendant company to have its station properly and efficiently lighted with artificial light, so that its passengers when waiting at said station for a car would not be subjected to danger through the lack of said proper lighting; and it likewise became and was the duty of said defendant company to construct, keep and maintain a sufficiently large, adequate and protected station platform, so that its said passengers when thereon should not be subjected to hurt or injury on account of such insufficiency of size or want of proper protection thereabouts; but notwithstanding its said duty in this regard, said defendant company became and was negligent in that it failed to have sufficient cars, or run its said cars with sufficient frequency to prevent the collection, congestion, and undue crowding caused by the large number of

people that had been brought by said defendant company to its said Great Falls pleasure grounds or amusement park; that it furthermore was negligent in its failure to supply a properly authorized officer to prevent the undue crowding of its said station platform at Great Falls, and keep order and guard the safety of its said passengers when thereon to board its said cars; that it also was negligent in its failure to supply proper and sufficient artificial lighting when night fell and darkness had settled down, to show to its said passengers clearly and distinctly the extent and confines of its said station platform, and it likewise became and was negligent

3 in its failure to construct, keep or maintain a sufficiently large, adequate and protected station platform, having instead a long, narrow, high, entirely unprotected and most dangerous platform to get on in order to reach its said cars, by reason of all of which said negligence on the day aforesaid, said plaintiff, who was a round trip passenger from the District of Columbia to Great Falls, and who had safely reached said Great Falls and was about to return therefrom to her home in Washington, District of Columbia, went to the said Great Falls station platform for this purpose and there intended taking the next car for her destination; that it was dusk or dark when she reached said station platform, and she was unable to see the size or extent thereof on account of its being insufficiently lighted and the vast number of people on and around the same; that said plaintiff waited for a car about fifteen or twenty minutes, all the time the crowd increasing in and about said station platform, until finally some in the crowd commenced to jostle and push about; that some person called out that the car was coming, whereupon there was a rush, and a number of those waiting for said car jumped down from the platform, and others from the rear tried to shove to the front, whereby said plaintiff, who was herself in the front part of said station platform, and who was in the exercise of due care, and without negligence on her part, was pushed and shoved in such a manner as that in order to preserve her equilibrium she took a half step forward on what looked to her to be a continuation of said station platform, when, because of the aforesaid negligence on the part of said defendant company, she was jostled, pushed and thrown violently from the top of this station platform—of a height

4 of some $2\frac{1}{2}$ to 3 feet above the level of the ground—on her stomach, and being a very heavy woman, said plaintiff thereby had her left leg and ankle fractured in such a manner as that the ligaments were torn from place, and she became and was permanently injured; her left hip was sprained and permanently injured; her back wrenched and sprained, and she was otherwise injured internally; she had a long and deep cut and abrasion over her right eye and extending back upon the scalp, from which she has permanently lost the most of her hair on that side of her head, and as a result therefrom has severe and excruciating pains in her head; that her general health and nervous system has been completely broken down, and is permanently impaired and injured; that her left arm was badly bruised and contused, and her left hand was so badly mashed and jambed as that the thumb thereof

was badly sprained, and the loss of most of the plaintiff's fingernails took place; that she was as well shocked, bruised, contused, hurt and injured, and became and was sick, sore, lame and disordered, and so remained for a long space of time, to wit, hitherto, and will so remain in the future, during all of which time plaintiff suffered and will continue to suffer great pain mental distress and anguish from the injuries and shock thus occasioned her whole system, to her damage, in to wit, \$24600, and to her special damage for doctor's services in, to wit, \$300., and for her expenditures of money for medicines, drugs, linaments and ointments, in, to wit, \$100. in and about her endeavor to be healed and cured of said injuries, bruises, wounds, hurts and cuts so as aforesaid occasioned; in all to the total damage of said plaintiff in the sum of \$25000., which amount she claims of said defendant company, besides the costs of this suit.

LEONARD J. MATHER,
Att'y for Pl'ff.

5

Notice to Plead.

The defendant is to plead hereto on or before the twentieth day, exclusive of Sundays and legal holidays, occurring after the day of service hereof; otherwise, judgment.

LEONARD J. MATHER,
Att'y for Pl'ff.

Plea.

Filed July 1, 1908.

* * * * *

Now comes the defendant, and for plea to the declaration filed in the above entitled cause, says that it is not guilty in manner and form as therein alleged.

WILTON J. LAMBERT,
Attorney for Defendant.

Joinder of Issue.

Filed December 2, 1909.

* * * * *

The plaintiff, Mary L. Dixon, joins issue on the Plea of the defendant to the Amended Declaration heretofore filed herein.

LEONARD J. MATHER,
JOHN P. McMAHON,
Attorneys for Plaintiff.

Amended Declaration.

Filed Dec. 2, 1912.

* * * * *

6 The plaintiff, Mary L. Dixon, with leave of the Court first had and obtained, files this her Amended Declaration herein, and
sues the defendant, the Great Falls and Old Dominion Rail-
way Company, a corporation, for that, heretofore, to wit, on
or about August 25th, 1907, the defendant company, having an
office and place of business in the District of Columbia, was the
owner or lessee of, and controlled, managed, and operated a certain
electric railway for the transportation of passengers in the District
of Columbia and State of Virginia, and in connection with its said
railway and transportation of passengers, had established certain
pleasure grounds or an amusement park at Great Falls, in the said
State of Virginia, which was then and is now the furthestmost
terminal station from the District of Columbia of said defendant
company's electric railway; that on the day aforesaid large num-
bers of people were brought by said defendant company's trains to
said pleasure grounds and amusement park, and it then and there
became and was the duty of the said defendant company to supply
and have a sufficient number of cars, and use them with such fre-
quency as to prevent undue and improper crowding thereof, or of
its station platform at said Great Falls Station; that it furthermore
became and was the duty of said defendant company to have a prop-
erly authorized officer or officers of said company on or about said
station platform, who would assume control of and regulate any
large body of people when assembled thereon to take returning cars
in the evening for their different destinations; that after daylight
had passed, and darkness had set in, it also became and was the
duty of said defendant company to have its station properly and
efficiently lighted with artificial light, so that its passengers when
waiting at said station for a car would not be subjected to danger
through the lack of said proper lighting, and it likewise became and
was the duty of said defendant company to construct, keep
7 and maintain a sufficiently large, adequate and protected
station platform, so that its said passengers when thereon
should not be subjected to hurt or injury on account of such in-
sufficiency of size or want of proper protection thereabouts; but not-
withstanding its said duty in this regard, said defendant company
became and was negligent in that it failed to have sufficient cars, or
run its cars with sufficient frequency to prevent the collection, con-
gestion, and undue crowding caused by the large number of people
that had been brought by said defendant company to its said Great
Falls pleasure grounds or amusement park; that it furthermore was
negligent in its failure to supply a properly authorized officer or
officers to prevent the undue crowding of its said station platform
at Great Falls, and keep order and guard the safety of its said pas-
sengers when thereon to board its said cars; that it also was negli-
gent in its failure to supply proper and sufficient artificial lighting

when night fell and darkness had settled down, to show to its said passengers clearly and distinctly the extent and confines of its said station platform, and it likewise became and was negligent in its failure to construct, keep or maintain a sufficiently large, adequate and protected station platform, having instead a long, narrow, high, entirely unprotected and most dangerous platform to get on in order to reach its said cars, by reason of all of which said negligence on the day aforesaid, said plaintiff, who was a round trip passenger from the District of Columbia to Great Falls, and who had safely reached said Great Falls and was about to return therefrom to her home in Washington, District of Columbia, went to the said Great Falls Station platform for this purpose and there intended taking the next car for her destination; that it was

8 dusk or dark when she reached said station platform, and she was unable to see the size or extent thereof on account of its being insufficiently lighted and the vast number of people on and around the same; that said plaintiff waited for a car about fifteen or twenty minutes, all the time the crowd increasing in and about said station platform, until finally some in the crowd commenced to jostle and push about; that some person or persons called out that the car was coming, whereupon there was a rush, and a number of those waiting for said car in the rear tried to shove to the front, whereby said plaintiff, who was herself in the front part of said station platform, and who was in the exercise of due care, and without negligence on her part, was pushed and shoved in such a manner as that she was jostled, pushed and thrown violently from the top of this station platform on her stomach, and being a very heavy woman, said plaintiff thereby had her left leg and ankle fractured in such a manner as that the ligaments were torn from place, and she became and was permanently injured; her left hip was sprained and permanently injured; her back wrenched and sprained, and she was otherwise injured internally; she had a long and deep cut and abrasion over her right eye and extending back upon the scalp, from which she has permanently lost most of her hair on that side of her head, and as a result therefrom has severe and excruciating pains in her head; that her general health and nervous system has been completely broken down, and is permanently impaired and injured; that her left arm was badly bruised and contused, and her left hand was so badly mashed and jambed as that the thumb thereof was badly sprained, and the loss of most of the plaintiff's

9 fingernails took place; that she was as well shocked, bruised, contused, hurt and injured, and became and was sick, sore, lame and disordered, and so remained for a long space of time, to wit, hitherto, and will so remain in the future, during all of which time plaintiff suffered and will continue to suffer great pain, mental distress and anguish from the injuries and shock thus occasioned her whole system, to the damage of said plaintiff in the sum of \$25,000., which amount she claims of said defendant company, besides the costs of this suit.

LEONARD J. MATHER,
JOHN P. McMAHON,
Att'ys for Pl'ff.

Memoranda.

May 29, 1911.—Ordered that pleadings to original shall stand as pleadings to amended declaration.

December 2, 1909.—Verdict for Plaintiff for \$1000.

Motion for a New Trial.

Filed December 7, 1909.

* * * * *

Comes now the plaintiff, by her attorneys, and moves the Court to grant her a new trial in the above entitled case for the following reasons:

1. That the verdict was, and is, contrary to the evidence.
2. That the verdict was, and is, contrary to the weight of the evidence.
3. That the verdict was, and is, contrary to law, and the Court's instructions thereon.

10 4. That the verdict was one of compromise insisted upon by two of the jurors as the only verdict they would find for the plaintiff, regardless of the seriousness of plaintiff's injuries, and the amount that would properly compensate therefor, if defendant company was liable at all for said injuries.

5. That one of the jurors was related to Rudolph Yeatman, Esquire, one of the attorneys for the defendant railway company, and was therefore prejudiced against the plaintiff, and partial to the defendant company to such an extent as to bias his judgment.

LEONARD J. MATHER,
JOHN P. McMAHON,
Attorneys for Plaintiff.

Wilton J. Lambert and Rudolph Yeatman, Esquires, Attorneys for Defendant:

You will please take notice that we shall call the above Motion to the attention of Mr. Chief Justice Clabaugh, sitting in Circuit Court #2, on Friday next, December 10th, at ten o'clock, A. M. or as soon thereafter as counsel can be heard.

LEONARD J. MATHER,
JOHN P. McMAHON,
Attorneys for Plaintiff.

DISTRICT OF COLUMBIA, *To wit:*

Leonard J. Mather, on oath deposes and says that he is one of the attorneys for the plaintiff in the above entitled case, and as such was present during its trial; that since the verdict was rendered he has been advised that one of the jurors, Fenelon Saur by name, was a relative of Rudolph Yeatman, one of the attorneys for the defendant,

which fact remained undisclosed and unknown to the plaintiff's attorneys, although the jurors were interrogated on voir dire
 11 before selection and the trial of the case; affiant further says, on information and belief, that said juror evidenced such bias and pre-judgment of the issues to be deliberated and adjudged upon, as to make necessary the compromise verdict that was rendered, or bring about a mistrial.

LEONARD J. MATHER.

Subscribed and sworn to before me this 7th day of December, 1909.

[SEAL.]

JENNIE M. SHEFFER,
Notary Public, D. C.

Memoranda.

January 11, 1910.—New trial ordered.
 June 6, 1911.—Verdict for Defendant.

Supreme Court of the District of Columbia.

THURSDAY, June 8th, 1911.

Session resumed pursuant to adjournment, Hon. Job Barnard, Justice presiding.

* * * * *

Comes now the plaintiff by her attorney Mr. Leonard J. Mather, and withdraws her motion for a new trial filed herein. Wherefore, judgment on verdict is ordered, and it is considered, that the plaintiff take nothing by this action, that the defendant go hence without day, be for nothing held, and recover of plaintiff its costs of defense to be taxed by the clerk, and have execution thereof.

12 From the foregoing the plaintiff by her attorney, in open court, notes an appeal to the Court of Appeals of the District of Columbia; whereupon, the penalty of a bond for costs is hereby fixed in the sum of One Hundred Dollars.

Further the time within which to submit the Bill of Exceptions herein, is hereby extended to and including the second day of August 1911, and the time to file a transcript of the record in the said Court of Appeals, to and including the fourth day of September 1911.

Memorandum.

May 10, 1912.—New trial ordered pursuant to mandate of Court of Appeals.

Notice to Produce.

Filed October 13, 1912.

In the Supreme Court of the District of Columbia.

At Law. No. 50652.

MARY L. DIXON, Plaintiff,

vs.

GREAT FALLS & OLD DOMINION RY., a Corporation, Defendant.

At Law. No. 52293.

ROBERT A. DIXON, Plaintiff,

vs.

GREAT FALLS & OLD DOMINION RY., a Corporation, Defendant.

Wilton J. Lambert and Rudolph H. Yeatman, Esquires, Attorneys
for defendants:

13 Please produce at the trial of the above captioned cases,
when reached for trial, before Mr. Justice Barnard in Circuit
Court No. 1, the following:

1. Such record or records as will show the number of trains and
the number of single cars dispatched and used on August 25th, 1907,
in carrying passengers from the Washington terminus of the de-
fendant company's railway to its Great Falls Station in Alexandria
County, Virginia and return.

2. Such record or records as show the schedule upon which said
trains were run on August 25th, 1907.

3. Such record or records as will show the number of round-trip
tickets from Washington to Great Falls and return sold on August
25th, 1907.

4. Such record or records as will show the individual return of
each conductor as to the number of passengers returned under his
care from Great Falls to Washington on August 25th, 1907.

5. The cash-room book (which Mr. King testified was a perma-
nent record) showing the actual number of people carried to Great
Falls on August 25th, 1907.

LEONARD J. MATHER,

JOHN P. McMAHON,

Att'ys for Pl'ffs.

Service of the above Notice to Produce, by copy, acknowledged
this 13th day of October, 1913.

Memoranda.

October 22, 1913.—Law Cause No. 50652 consolidated with case
No. 52293 for purposes of trial.

October 28, 1913.—Verdict for Defendant in Law Cause No.
50652.

Filed December 5, 1913.

* * * * *

In this case the amended declaration charges substantially, that the defendant company was guilty of negligence, in failing to construct, properly light, keep, and maintain, a sufficiently large, adequate, and protected station platform, at Great Falls, Virginia, to prevent its passengers when thereon from being hurt or injured; and in failing to have sufficient cars, or to run its cars with sufficient frequency, to prevent the collection, congestion, and undue crowding caused by the large number of people that had been brought by the defendant to the Great Falls pleasure grounds; and in its failure to supply a properly authorized officer, or officers, to prevent the undue crowding of its said station platform, and to keep order, and guard the safety of its passengers; and that by reason of the failure of defendant to discharge its duty in all these respects, she was jostled, pushed, and thrown violently from the top of the said station platform, and thereby injured, etc.

In the original declaration, she avers that she was pushed and shoved in such a manner as that in order to preserve her equilibrium, she took a half-step forward on what looked to her to be a continuation of said platform, when, because of the said negligence of the defendant, she was jostled, pushed, and thrown violently from the top of the platform, a height of two and one-half to three feet above the level of the ground, and thereby injured, etc.

The original declaration was filed June 9, 1908. The injury complained of occurred August 25, 1907. A trial was had, beginning on November 29, 1909, on the averments of the original
15 declaration. During the progress of the trial, and before verdict was rendered, an amended declaration was filed by leave of court; and thereupon, the case was submitted to the jury, and a verdict rendered in favor of the plaintiff, for \$1,000. On motion of the plaintiff, this verdict was set aside, and the case was again brought on for trial, May 29, 1911; and at that trial a verdict was rendered for the defendant, by direction of the court.

The plaintiff appealed, and the appellate court held it was error to take the case from the jury, and the judgment was therefore reversed, and a new trial ordered.

Dixon v. Great Falls & Old Dominion Railway Company, 38 Appeals D. C., 501.

The case then came back for trial, and was calendared in Circuit Court No. 1; and the attorney for the plaintiff asked to have the case certified to Circuit Court No. 2, because I was then holding Circuit Court No. 1, and I had sat in the second trial of the case, and had directed a verdict for the defendant.

There were two cases growing out of the same facts, one by the wife, and the other by the husband; the latter was calendared in Circuit Court No. 2; and it had been, and was, the practice, where

two cases involving the same facts were calendared, the court having the case bearing the first number, should try the two cases, the second case being certified to that court, if on the calendar of the other court; and on conference with Mr. Justice Anderson, holding Circuit Court No. 2, it was decided by us, that the fact that a case had been once tried by either of us, was not sufficient ground to change the said well known rule of practice; and the fact that the court had once directed a verdict, instead of submitting it to the jury, did not
16 seem to me to be sufficient ground for a change of venue, or good reason why the same judge should not again try the case, and submit it to the jury, as directed by the appellate court.

The case, therefore, came on for trial again before me, and was tried and submitted to the jury, and the jury rendered a verdict for the defendant.

The plaintiff has filed a motion for a new trial, based on five grounds. First, because the verdict is contrary to the evidence; second, because the verdict is contrary to the weight of evidence; third, because the verdict is contrary to law, and to the instructions of the court; fourth, because of errors of law committed by the court at the trial; and, fifth, because of newly discovered evidence.

No showing is made as to any newly discovered evidence, and that point has not been argued.

The first three causes have not been insisted upon in argument, but the fourth cause has been earnestly argued, and counsel has been urgent in claiming that reversible error was committed in the course of the trial by the rulings of the court, in the admission and exclusion of evidence, and in the instructions to the jury given and refused.

Because of this argument, and of the circumstances connected with the previous trial, and of the effort to have the case certified for trial to another court, I have examined the record with great care, in order to determine whether or not any injustice has been done the plaintiff in the rulings referred to.

From an examination of the testimony, it seems to me that the court was liberal in the admission of testimony; that all the relevant facts were allowed to be shown; although in the earlier part of the trial it may be that some rulings were made, in the exclusion
17 of testimony, which should not have been made, but which rulings, if they were errors, were afterwards corrected.

Briefly stated, the facts were that the plaintiff, with her daughter and some other friends, went to Great Falls on the cars of the defendant company, at a time when she must have known it was probable that there would be a crowd there. She mixed with the crowd on the grounds, and when evening was approaching, she and her party were anxious to return home. They went to the station, or place where the cars stopped for the purpose of unloading and taking on passengers, and waited there for two or three cars to come in and go out, without being able to conveniently secure a seat.

The defendant company had erected a platform to aid the passengers in boarding the cars, which platform was some ninety feet long, and a portion of the way between two and three feet wide, and

another portion, about four feet wide; and evidence of the height of that platform, given by witnesses who had measured the same, made it twelve to fourteen inches in height; but it was undisputed in the proof, that the lower step at each end of the car, by which the passengers entered, extended above the platform, and the purpose of this platform was to enable the passengers to more conveniently enter the cars. There were no guard-rails at the front or back of this platform, and could not have been without interfering with its use. There was one step at the back, by which the platform was entered, and the style of car that was then in use was one that had entrances only at the front and rear.

The testimony is conflicting as to the number of people that were standing on this platform at the time of the accident, but it
18 may be safely presumed that when a car came in, or was about to come in, that anxious people would get as near to the place of entrance to the car as they could conveniently, in the hope of being among the first to secure seats.

The plaintiff was standing on this platform, waiting the approach of a car, and some one called out that a car was coming. Thereupon, the people became active in trying to get eligible positions for entering the car when it did arrive; and the plaintiff was either pushed off, or stepped off, of the platform on to the railroad track, and was injured.

In her original declaration, she says that she was bracing herself in order to prevent being pushed off, and in order to so brace herself, that she put her foot forward on what she supposed was an extension of the platform, and was in that manner pushed off, and was hurt.

The plaintiff's daughter and a companion with her, had previously stepped off the platform, and gone across the track for a more advantageous position with reference to seeing the car coming, and entering it when it did come; and they were not by the plaintiff at the time of the accident.

The testimony showed that the defendant had two men on the car to keep order and protect the people in getting on and off, one at each end, when the cars came in; and that they had other people on the grounds and in the vicinity of the platform, to preserve order. There is no evidence showing that there was any disorder in the crowd. There was no strife or noise among the people. The evidence was that it was a good-natured crowd, and the only motive that seemed to move people there, was an anxiety to get on the cars and get home before a storm came up, which appeared to be coming.

19 There were various things alleged in the declaration as constituting the negligence complained of, one being that the company was negligent in failing to provide proper lights at this point. The evidence does not bear out this allegation, and would not have been prevented by a wider platform, if the plaintiff so that an instruction, asking that the jury disregard that averment, was granted. The evidence clearly showed that there were ample lights, and that the people standing on the platform could

see all about them; and so there was no foundation for that allegation.

There was ample room back from the platform in the vicinity of where the car stopped, to accommodate the passengers without crowding. There were seats for them to sit in, and ample standing room on the grounds; but the plaintiff's counsel claims that the defendant was negligent in not building a wider platform; and in not having more employees there to prevent pushing. The accident would not have been prevented by a wider platform, if the plaintiff had insisted on standing at the edge of the same next to the car tracks, and the same had been filled with people who were anxious to get on to the car. They would have crowded to that edge just the same as it is claimed they did on this platform. The platform itself was not intended or constructed for the purpose of accommodating passengers to stand upon it, but was only a convenience in entering the cars; and if it had been wider, it could not have prevented the effort to get near to the cars, any more than it did as built. The officer who built it was an experienced railroad man, and in his judgment, this platform and arrangement was the safest and best that experience could suggest.

20 The plaintiff may have been mistaken in supposing that the platform was built for her to stand upon while the cars were coming in; but the defendant company was justified, in my opinion, in assuming that people who came to the resort would exercise their common sense in avoiding any apparent or probable danger from crowding or pushing; there was no danger in the situation itself; the platform was not a dangerous construction; it was low, open, and visible to everyone; and the main question is, was the defendant company guilty of negligence, under all the circumstances, in having constructed the same at that point, for the purpose of aiding its passengers in getting on the cars?

I must conclude from the testimony, that the platform at no point exceeded thirteen or fourteen inches in height. This is not an excessive step for any reasonably well person to take without danger. If the platform should become crowded, so that persons were forced to the edge of it next to the tracks, it would be fair to presume that they would step off without injury, and cross the track to the other side, where the room was unlimited, and where several of them did stand.

The case was submitted to the jury for its judgment as to the alleged negligence, and a careful reading of the instructions given, and the general charge made, convinces me that no error was committed of which the plaintiff can complain, in the instructions or charge; and the jury, after considering the case, returned a verdict in favor of the defendant.

Of course, I do not know on what theory this verdict was based, but it seems to me there are four or five theories on which the verdict could have been properly based, and neither of them would call for interference by the court.

21 First. They may have found that the plaintiff's proof was not sufficient to establish any of the acts of negligence stated in the declaration.

Second. They may have found that the accident was occasioned by the failure of the plaintiff to use her own sense and judgment about a matter that should have been plain to her, that is, that the accident was the result of the plaintiff's own negligence.

Third. They may have found that the accident was the result of the combined negligence of the plaintiff and the defendant, in which case they could not have found a verdict for the plaintiff.

Fourth. They may have found that the evidence in favor of the plaintiff did not preponderate over that in favor of the defendant, and that the failure to maintain the burden of proof, which the law requires her to do, induced them to find properly for the defendant.

Fifth. They may have concluded that there was no negligence on the part of either the plaintiff or the defendant, but that the injury was caused by an accident, as injuries are caused every day, and especially on excursions where many people crowd together to get the best positions.

It seems to me the jury would be justified, upon consideration of all the evidence and circumstances, and after exercising its judgment as to the weight and credibility of the testimony, in reaching a proper verdict for the defendant on either of these theories. That being so, it necessarily follows that the motion for a new trial must be overruled.

JOB BARNARD, *Justice*.

22 Since writing my opinion in this case, I have received an additional brief from plaintiff's counsel, in which it is claimed specifically, that error was committed by the court, in refusing to grant the plaintiff's second prayer for instructions.

The subject of this prayer was properly argued to the jury under the plaintiff's first prayer, that was granted, and also under the fourth prayer for the defendant, that was conceded by plaintiff's counsel.

The wording of the plaintiff's second prayer was objectionable; it was vague as to the use to be made of the platform; it was vague as to the accommodation that was intended, and the number of people that were allowed; and it was objectionable because it seemed to present to the jury a single fact, and to tell them if they found that fact, to wit, an insufficient platform, that they must find a verdict for the plaintiff.

A review of the instructions and charge leaves my mind unchanged as to the statement in my opinion, that the case was fairly submitted to the jury; and the verdict must be allowed to stand.

JOB BARNARD, *Justice*.

Supreme Court of the District of Columbia.

FRIDAY, December 5, 1913.

Session resumed pursuant to adjournment, Mr. Justice Barnard presiding.

No. 50652. At Law.

MARY L. DIXON, Plaintiff,

vs.

GREAT FALLS AND OLD DOMINION RAILWAY COMPANY, a Corporation, Defendant.

23 This cause coming on to be heard upon the motion of plaintiff filed herein for a new trial, the same having heretofore been argued and submitted, it is considered that said motion be, and hereby is overruled, and judgment on verdict ordered.

Therefore, it is considered that the plaintiff herein take nothing by her suit, and that the defendant herein go thereof without day and be for nothing held, and recover against the plaintiff the costs of *their* defense to be taxed by the Clerk, and have execution thereof. Appeal noted and bond fixed at \$100.

Memoranda.

December 12, 1913.—Appeal Bond approved and filed.

January 16, 1914.—Time to submit exceptions extended to February 6, 1914, and to file transcript of record to February 24, 1914, inclusive.

24 February 6, 1914.—Bill of Exceptions submitted.

February 20, 1914.—Time to file transcript of record further extended to March 24, 1914, inclusive.

March 13, 1914.—Motion to strike out Bill of Exceptions overruled. Exception noted.

March 24, 1914.—Time to file transcript of record further extended to April 27, 1914, inclusive.

April 25, 1914.—Time to file transcript of record further extended to May 25, 1914, inclusive.

May 25, 1914.—Time to file transcript of record further extended to June 29, 1914.

Supreme Court of the District of Columbia.

FRIDAY, June 5, 1914.

Session resumed pursuant to adjournment, Mr. Justice Barnard presiding.

* * * * *

The Court having this day signed the bill of exceptions heretofore submitted in the above-entitled causes, now orders the same of record as of the time of the noting thereof at the trial.

25

Designation of Record.

Filed June 11, 1914.

* * * * *

In preparing the Transcript of Record in the above entitled cases the Clerk will please embody the following, viz:

No. 50,652, at Law:

1. Plaintiff's Original Declaration.
2. Plea.
3. Memo. of Joinder of Issue.
4. Amended Declaration.
5. Memo. that Plea and Joinder stand to Amended Declaration.
6. Memo. of verdict of December 2, 1909, for plaintiff for \$1,000.
7. Motion for new trial and affidavit in support thereof.
8. Memo. of new trial ordered.
9. Memo. of directed verdict of June 6, 1911.
10. Memo. of Judgment.
11. Memo. of appeal.
12. Memo. of Mandate of Court of Appeals reversing judgment and remanding case for new trial.
13. Memo. of Plaintiff's order to produce.
14. Memo. of order consolidating cases.
15. Memo. of Verdict.
16. Judgment.
17. Opinion of Court.
18. Memo. of Appeal Bond approved and filed.
19. Memo. of time to file Bill of Exceptions and transcript of Record extended.
20. Memo. of Bill of Exceptions submitted and time to
- 26 file Record further extended.
21. Memo. of motion to strike out Exceptions; overruled.
22. Memo. of time to file Record further extended.
23. Memo. of time to file Record further extended.
24. Memo. of time to file Record further extended.
25. Order making Bill of Exceptions a part of the Record.
26. This Designation.
27. Assignment of Errors, viz:

1. The Trial Court erred in refusing to charge the jury that they might consider the reasonable sufficiency of defendant's Great Falls station platform to accommodate the number of people allowed thereon; and likewise erred in failing to charge the jury that they consider as negligence defendant's failure to control and regulate the number of people allowed on said station platform, if they found a large number of people had been permitted to accumulate upon said station platform at the time so as to make a reasonably safe place a dangerous place; and also erred in failing to charge the jury as prayed in plaintiff's prayer No. II, as follows:

"You are instructed as a matter of law that it was the duty of the defendant railway company to have its platform reasonably

sufficient and safe in all respects for the use of its plaintiff passenger on August 25, 1907; if, therefore, you find from all the facts and circumstances in the case that said defendant railway company's station platform was not reasonably sufficient to safely accommodate the number of people allowed thereon at the time of the accident, and further find that because thereof said plaintiff passenger, without fault on her part, was injured, then she is entitled to your verdict."

27 2. The Trial Court erred in refusing at first to allow the plaintiffs to show negligence on the part of the defendant in not having any guards in uniform around the station platform, and in not having adopted any sort of means for controlling the people and preventing them from accumulating in large and dangerous numbers upon said station platform.

3. The Trial Court erred in granting, over plaintiffs' objection and exception taken, defendant's prayer No. III, as follows:

"The jury are instructed as a matter of law that there is no evidence in this case establishing or tending to establish any negligence on the part of the defendant company in failing to provide lighting facilities to so light up its platform at Great Falls, Virginia, at the time plaintiff, Mary L. Dixon, received the injuries complained of herein, so as to render it reasonably safe for use by persons intending to become passengers upon its cars so as to be the proximate cause of Mrs. Dixon's injuries, and therefore they cannot find that the injuries sustained by said plaintiff were the result of any such alleged negligence of the defendant."

4. The Trial Court erred in not permitting plaintiff to show that defendant's so-called guards had been instructed not to interfere with its passengers and patrons accumulating and crowding upon the station platform, or for anything short of a fight or extreme rowdyism.

28 5. The Trial Court erred in permitting the witness, William H. Beck, to be examined from the stenographic record of the last trial so that he might be made to affirm parts picked out by defendant's counsel as favorable to his client, although not then forming the unaided recollection of the witness.

6. The Trial Court erred in allowing the original Declaration to be used by counsel for the defendant when interrogating plaintiff, and to assume that it was her language and prior utterance therein and not the language of her counsel, in the effort to confuse, break down and vary plaintiff's testimony.

7. The Trial Court erred in granting over plaintiffs' objection and exception taken, defendant's prayer No. VI, as follows:

"The jury are instructed as a matter of law that the burden of establishing negligence on the part of the defendant as alleged by the plaintiffs, is upon the plaintiffs, and that if the testimony in these cases should be such as to leave the minds of the jury in a state of equipoise, as to negligence of the defendant, their verdict should be for the defendant."

8. The Trial Court erred in granting over plaintiffs' objection and exception taken, defendant's prayer No. VII, as follows:

"The jury are instructed as a matter of law that if they find the defendant was guilty of negligence which was the proximate cause of the injuries sustained by the plaintiff, Mary L. Dixon, yet if they further find that the said plaintiff was guilty of negligence which contributed to her said injuries, their verdict should be for the defendant."

29 9. The Trial Court erred in permitting the defendant to offer in evidence and use during the course of the trial a plat or plats of the platform and physical surroundings at Great Falls Station, prepared from measurements and data made long after the happening of the accident, and after the physical conditions thereabouts had been changed and altered (although said plat or plats were supposed to show all the physical surroundings of said station platform as to its size, its height from the ground and the lights therein and thereabouts, etc., at the actual time of the happening of the accident), without first properly proving the same, or proving that said plat or plats were correct and accurate representations of what either or both purported to be.

10. The Trial Court erred in refusing to compel the defendant to produce its records showing the number of people at Great Falls during and throughout the day the accident happened, and about the time it happened, although such records were in its possession, were available, and had been called for by plaintiff in a notice to produce in ample time sufficient to permit of their production.

11. The Trial Court erred in allowing counsel for the defendant to show by its employees and guards, upon their re-direct examination, the fact that there had been no prior accidents at its station platform.

30

Declaration.

Filed January 17, 1910.

In the Supreme Court of the District of Columbia.

Law. No. 52293.

ROBERT A. DIXON, Plaintiff,
vs.

GREAT FALLS AND OLD DOMINION RAILWAY COMPANY, a Corporation,
Defendant.

The plaintiff, Robert A. Dixon, sues the defendant, the Great Falls and Old Dominion Railway Company, a corporation, for that heretofore, to wit, on or about August 25th, 1907, the defendant company, having an office and place of business in the District of Columbia, was the owner or lessee of, and controlled, managed, and operated a certain electric railway for the transportation of passengers in the District of Columbia and State of Virginia, and in connection with its said railway and transportation of passengers, had established certain pleasure grounds or an amusement

park at Great Falls, in said State of Virginia, which was then and is now the furthestmost terminal station from the District of Columbia of said defendant company's electric railway; that on the day aforesaid large numbers of people were brought by said defendant company's trains to said pleasure grounds and amusement park, and it then and there became and was the duty of the said defendant company to supply and have a sufficient number of cars, and use them with such frequency as to prevent undue and improper crowding thereof, or of its station platform at said Great Falls Station; that it furthermore became and was the duty of said defendant

31 company to have a properly authorized officer or officers of said company on or about said station platform, who would assume control of and regulate any large body of people when assembled thereon to take returning cars in the evening for their different destinations; that after daylight had passed, and darkness had set in, it also became and was the duty of said defendant company to have its station properly and efficiently lighted with artificial light, so that its passengers when waiting at said station for a car would not be subjected to danger through the lack of proper lighting, and it likewise became and was the duty of said defendant company to construct keep and maintain a sufficiently large, adequate and protected station platform, so that its said passengers when thereon should not be subjected to hurt or injury on account of such insufficiency of size or want of proper protection thereabouts; but notwithstanding its said duty in this regard, said defendant company became and was negligent in that it failed to have sufficient cars, or run its cars with sufficient frequency to prevent the collection, congestion, and undue crowding of its station platform caused by the large number of people that had been brought by said defendant company to its said Great Falls pleasure grounds or amusement park; that it furthermore was negligent in its failure to supply a properly authorized officer or officers to prevent undue crowding of its said station platform at Great Falls, and keep order and guard the safety of its passengers when thereon to board its said cars; that it also was negligent in its failure to supply proper and sufficient artificial lighting when night fell and darkness had settled down, to show to its said passengers clearly and distinctly the extent and confines of its said station platform, and it likewise became and was negligent in its failure to construct, keep or maintain a sufficiently large, adequate and protected station platform, having instead a long, narrow, high, entirely unprotected and most dangerous platform to get on in order to reach its said cars, by reason of all of which said negligence on the aforesaid day, Mary L. Dixon, who was then and still is the wife of the said plaintiff, was a round trip passenger from the District of Columbia to Great Falls, and having safely reached said Great Falls, was about to return therefrom to her home in Washington, District of Columbia, when she went to the said Great Falls Station platform for this purpose, intending there to take the next available car for her destination; that it was dusk or dark when she reached said station platform, and she was unable to see the size or extent thereof on account of its being insufficiently lighted, and

also because of the vast number of people on and around the same; that plaintiff's wife, the said Mary L. Dixon waited for a car about fifteen or twenty minutes, all the time the crowd increasing in and about said station platform, until finally some in the crowd commenced to jostle and push about; that some person or persons called out that the car was coming, whereupon there was a rush, and a number of those waiting for said car in the rear tried to shove to the front, whereby plaintiff's wife, the said Mary L. Dixon, who was herself in the front part of said station platform, and who was in the exercise of due care, and without negligence on her part, was pushed and shoved in such a manner as that she was jostled, pushed and thrown violently from the top of this station platform on her stomach, and being a very heavy woman, plaintiff's wife, the said Mary L. Dixon thereby had her left leg and ankle fractured and dislocated in such a manner as that the ligaments were torn from place, and she became and was permanently injured; her left hip was sprained and permanently injured; her back
 33 wrenched and sprained, and she was otherwise injured internally; she had a long and deep cut and abrasion over her right eye and extending back upon the scalp, from which she has permanently lost most of her hair on that side of her head, and as a result therefrom has severe and excruciating pains in her head; that her general health and nervous system has been completely broken down and is permanently impaired and injured, and her life in all reasonable certainty, shortened thereby; that her left arm was badly bruised and contused, and her left hand so badly mashed and jambed as that the thumb thereof was badly sprained, and the loss of most of her finger nails took place; that she was as well shocked, bruised, contused, hurt and injured, and became and was sick, sore, lame and disordered, and so remained for a long space of time, to wit, hitherto, and will so remain in the future, during all of which time the plaintiff's wife, the said Mary L. Dixon, suffered and will continue to suffer great pain, mental distress and anguish from the injuries and shock thus occasioned her whole system, whereby said plaintiff during all of that time, to wit, hitherto, lost and was deprived of, and will in the future lose and be deprived of the comfort, benefit, society, services and assistance of his wife, the said Mary L. Dixon, in his domestic affairs, which he might and otherwise would have had, and thereby also the plaintiff was and will be so long as his wife the said Mary L. Dixon may live, forced to lay out and expend large sums of money for medicines, liniments, and ointments in and about endeavoring to care for his wife, the said Mary L. Dixon and in respect of her said injuries, sickness and disorders, and to cure her of the same if possible, and for medical attention and treatment, ambulance
 34 hire, hospital expenses, nursing attendance, and servant's hire, all to the damage of the plaintiff.

Wherefore he brings this suit and claims the sum of \$10,000.00 besides costs.

LEONARD J. MATHER,
 JOHN P. McMAHON,
Att'ys for Pl'ff.

Defendant's Pleas.

Filed February 1, 1910.

* * * * *

Now comes the defendant and for pleas to the declaration filed in the above entitled cause says:

1. That it is not guilty in manner and form as therein alleged.
2. And for further plea the defendant says that the plaintiff's cause of action did not accrue within one year before action brought.

WILTON J. LAMBERT,
Attorney for Defendant.

Joinder of Issue.

Filed April 14, 1910.

* * * * *

The plaintiff joins issue on the Plea of the defendant company heretofore filed in the above entitled case.

JOHN P. McMAHON,
LEONARD J. MATHER,
Attorneys for Plaintiff.

35

Notice to Produce.

Filed March 28, 1911.

* * * * *

A. A. Thomas, Esq., Superintendent Great Falls and Old Dominion Railway Co.; Wilton J. Lambert & Rudolph Yeatman, Esqrs., Attorneys for Defendant.

GENTLEMEN: Please produce at the trial of the above-entitled case, and that of Mary L. Dixon v. Great Falls & Old Dominion Railway Company, a Corporation, At Law No. 50,652, whenever said cases may be reached for trial before Mr. Justice Barnard in Circuit Court No. 2, the following:

- (1). Such record, or records, as will show the number of trains and the number of single cars dispatched and used on August 25, 1907, in carrying passengers from the Washington Terminus of the defendant company's railway to its Great Falls Station in Alexandria County, Virginia, and return;
- (2). Such record, or records, as show the schedule upon which said trains were run on August 25, 1907;
- (3). Such record, or records, as will show the number of round-trip tickets from Washington to Great Falls and return sold on August 25, 1907;
- (4). Such record, or records, as will show the individual returns of each conductor as to the number of passengers returned under his care from Great Falls to Washington on August 25, 1907;
- (5). Cash room book, or books, or other books, showing the act-

ual number of fares collected from passengers going to and return-
 ing from Great Falls on the Great Falls & Old Dominion
 36 Railway Company on August 25, 1907.

LEONARD J. MATHER,
 JOHN P. McMAHON,
Attorneys for Plaintiff.

Memoranda.

October 22, 1913.—Consolidated with case No. 50,652 for purposes of trial.

October 28, 1913.—Verdict for Defendant, in Law Cause No. 52293.

Supreme Court of the District of Columbia.

FRIDAY, December 5, 1913.

Session resumed pursuant to adjournment, Mr. Justice Barnard presiding.

* * * * *

This cause coming on to be heard upon the motion of plaintiff filed herein, for a new trial, the same having heretofore been argued and submitted, it is considered that said motion be, and hereby is overruled, and judgment on verdict ordered.

Therefore, it is considered that the plaintiff herein take nothing by his suit, and that the defendant herein go thereof without day and be for nothing held, and recover against the plaintiff the costs of its defense to be taxed by the Clerk, and have execution thereof. Appeal noted and bond fixed at \$100.

Memoranda.

December 12, 1913.—Appeal bond approved and filed.

37 January 16, 1914.—Time to submit Exceptions extended to February 6, 1914, inclusive, and to file transcript of record to and including February 24, 1914.

February 6, 1914.—Bill of Exceptions submitted.

February 20, 1914.—Time to file transcript of record further extended to March 24, 1914, inclusive.

March 13, 1914.—Motion to strike out Exceptions overruled. Exception noted.

March 24, 1914.—Time to file transcript of record further extended to April 27, 1914, inclusive.

April 25, 1914.—Time to file transcript of record further extended to May 25, 1914, inclusive.

May 25, 1914.—Time to file transcript of record further extended to June 29, 1914, inclusive.

For order making Bill of Exceptions part of record and assignments of error in Law Cause No. 52293, see pages numbered 24 and 26, respectively, of this transcript.

38

Designation of Record.

Filed June 11, 1914.

* * * * *

No. 52293. At Law.

1. Declaration.
2. Plea.
3. Memo. of Joinder of Issue.
4. Memo. of Plaintiff's Notice to Produce.
5. Memo. of consolidation for trial with action at Law No. 50,652.
6. Memo. of verdict.
7. Judgment.
8. Memo. of Appeal Bond approved and filed.
9. Memo. of time to submit Exceptions and file transcript of Record extended.
10. Memo. of Bill of Exceptions submitted and time to file Record further extended.
11. Memo. of Motion to strike out Exceptions; overruled.
12. Memo. of time to file Record further extended.
13. Memo. of time to file Record further extended.
14. Memo. of time to file Record further extended.
15. Order making Bill of Exceptions a part of the Record.
16. This Designation.
17. Memo. of Assignment of Errors, as in action at Law No. 50,652.

LEONARD J. MATHER,
JOHN P. McMAHON,
Att'ys for Pl'ffs.

Service of above, by copy acknowledged this 11th day of June, 1914.

WILTON J. LAMBERT.

39

Notice for Settling Bill of Exceptions.

Filed February 6, 1914.

Law. No. 50652.

* * * * *

Wilton J. Lambert, Esq., Attorney for Defendant Railway Company.

SIR: You will please take notice that we have this day filed and submitted the plaintiff's Bill of Exceptions in the above captioned case (of which the enclosed is a copy), in order to have the same settled of record by Mr. Justice Barnard on Friday, February 20th, 1914.

LEONARD J. MATHER,
JOHN P. McMAHON,
Attorneys for Plaintiff.

Motion to Strike Out Bill of Exceptions.

Filed February 20, 1914.

Law. No. 50652.

* * * * *

Now comes the defendant and moves the court to strike out or to refuse to sign the bill of exceptions heretofore submitted in the above entitled cause by the plaintiff, on the ground that the said plaintiff did not, at least eight days before the date of the submission of the said bill, present to the defendant's counsel the said bill or a copy thereof, as required by Rule 48 of the Supreme Court of the District of Columbia, and in support thereof refers to the affidavit of Rudolph H. Yeatman, hereto annexed and made a part hereof.

WILTON J. LAMBERT,
Attorneys for Defendant.

To Leonard J. Mather and John P. McMahon, Attorneys for Plaintiff:

Take notice that the foregoing will be for hearing on the 27th day of February, A. D. 1914.

WILTON J. LAMBERT,
Attorneys for Defendant.

DISTRICT OF COLUMBIA, ss:

Rudolph H. Yeatman, being first duly sworn, on oath deposes and says that he is a member of the bar, and associated with Wilton J. Lambert, the attorney for the defendant in the above entitled cause, having offices in the Munsey Building, in the District of
41 Columbia; that Leonard J. Mather, one of the attorneys for the plaintiff in the above entitled cause, called at the office of the said Wilton J. Lambert on the date that the bill of exceptions was submitted in the above entitled cause, and upon finding that said Lambert — out, called upon affiant and left a copy of the bill of exceptions submitted in the above entitled cause, with the statement that the same had that morning been submitted to the court.

RUDOLPH H. YEATMAN.

Subscribed and sworn to before me this 20th day of February, A. D. 1914.

JOHN R. YOUNG, *Clerk,*
By A. W. LEVENSALE, *Ass't Clerk.*

42

Additional Designation of Record.

Filed June 23, 1914.

Law. No. 50652.

* * * * *

John R. Young, Clerk:

In making up the transcript of record on appeal in the above entitled cause as prepared by the attorney for the plaintiff, you will include therein in addition to the papers and memoranda named in the plaintiff's designation of record, the following:

Memo. Jan. 16/1914.—Time to submit bill of exceptions extended to and including Feb. 6th, 1914, and to file transcript, extended to and including Feb. 24th, 1914.

Feb. 6/1914.—Notice of settling of Bill of Exceptions.

Memo. Feb. 6/1914.—Bill of Exceptions submitted.

Feb. 20/1914.—Motion to strike out Bill of Exceptions and notice filed.

Memo. Mar. 13/1914.—Motion to strike out bill of exceptions overruled and exception noted.

Memo. May 25/1914.—Time to file transcript extended to and including June 29th, 1914.

WILTON J. LAMBERT,
Attorney for Defendant.

43

Notice for Settling Bill of Exceptions.

Filed February 6, 1914.

Law. No. 52293.

* * * * *

Wilton J. Lambert, Esq., Attorney for Defendant Railway Company.

SIR: You will please take notice that we have this day filed and submitted the plaintiff's Bill of Exceptions in the above captioned case (of which the enclosed is a copy), in order to have the same settled of record by Mr. Justice Barnard on Friday, February 20th, 1914.

LEONARD J. MATHER,
JOHN P. McMAHON,
Attorneys for Plaintiff.

44

Motion to Strike Out Bill of Exceptions.

Filed February 20, 1914.

Law. No. 52293.

* * * * *

Now comes the defendant and moves the court to strike out or to refuse to sign the bill of exceptions heretofore submitted in the above

entitled cause by the plaintiff, on the ground that the said plaintiff did not, at least eight days before the date of the submission of the said bill, present to the defendant's counsel the said bill or a copy thereof, as required by Rule 48 of the Supreme Court of the District of Columbia, and in support thereof refers to the affidavit of Rudolph H. Yeatman, hereto annexed and made a part hereof.

WILTON J. LAMBERT,
Attorneys for Defendant.

To Leonard J. Mather and John P. McMahon, Attorneys for Plaintiff:

Take notice that the foregoing will be for hearing on the 28th day of February, A. D. 1914.

WILTON J. LAMBERT,
Attorneys for Defendant.

DISTRICT OF COLUMBIA, ss:

Rudolph H. Yeatman, being first duly sworn, on oath deposes and says that he is a member of the bar, and associated with Wilton J. Lambert, the attorney for the defendant in the above entitled cause, having offices in the Munsey Building, in the District of
45 Columbia; that Leonard J. Mather, one of the attorneys for the plaintiff in the above entitled cause, called at the office of the said Wilton J. Lambert on the date that the bill of exceptions was submitted in the above entitled cause, and upon finding that said Lambert — out, called upon affiant and left a copy of the bill of exceptions submitted in the above entitled cause, with the statement that the same had that morning been submitted to the court.

RUDOLPH H. YEATMAN.

Subscribed and sworn to before me this 20th day of February, A. D. 1914.

JOHN R. YOUNG, *Clerk*,
By A. W. LEVENSALER,
Ass't Clerk.

46

Additional Designation of Record.

Filed June 23, 1914.

Law. No. 52293.

* * * * *

John R. Young, Clerk:

In making up the transcript of record on appeal in the above entitled cause as prepared by the attorney for the plaintiff, you will include therein in addition to the papers and memoranda named in the plaintiff's designation of record, the following:

Memo. Jan. 16/1914.—Time to submit bill of exceptions extended to and including Feb. 6th, 1914, and to file transcript, extended to and including Feb. 24th, 1914.

Feb. 6/1914.—Notice of settling of bill of exceptions.

Memo. Feb. 6/1914.—Bill of exceptions submitted.

Feb. 20/1914.—Motion to strike out bill of exceptions and notice filed.

Memo. Mar. 13/1914.—Motion to strike out bill of exceptions overruled and exception noted.

Memo. May 25/1914.—Time to file transcript extended to and including June 29th, 1914.

WILTON J. LAMBERT,
Attorney for Defendant.

47 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 46, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copies of which are made a part of this transcript, in causes at Law, Nos. 50652 and 52293, in which Mary L. Dixon and Robert A. Dixon are Plaintiffs and Great Falls and Old Dominion Railway Company, a corporation, is Defendant, as the same remain upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 27th day of June, 1914.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

48 In the Supreme Court of the District of Columbia.

At Law. No. 50653.

MARY L. DIXON, Plaintiff,

vs.

GREAT FALLS & OLD DOMINION RAILWAY COMPANY, a Corporation,
Defendant,

and

At Law. No. 52293.

ROBERT A. DIXON, Plaintiff,

vs.

GREAT FALLS & OLD DOMINION RAILWAY COMPANY, a Corporation,
Defendant.

Bills of Exceptions.

Be it remembered that these cases came on for hearing on October 22, 23, 27 and 28, 1913, before the Honorable Job Barnard,

Associate Justice of the Supreme Court of the District of Columbia, and a jury.

Thereupon, after the jury had been duly sworn, the plaintiffs, to maintain the issues on their part joined, produced WILLIAM H. BECK who testified that he was at Great Falls on Sunday, August 25th, 1907, when Mrs. Dixon was hurt; that it was pretty warm; sultry; that after he saw the illumination of the Falls he went back to the station because it was getting dark and cloudy and he wanted to get back to the City like the rest of the people; guesses the platform was 2 feet high, 45 feet long, and about 6 feet broad; did not take any measurement of it; just looked over it; there were a great many people on the platform when he got there; he wanted to get back to the City so he got on the edge of the platform and waited for the car; the people kept coming in as it got cloudy, and threaten-

ing; 400 or 500 or 600 people around the platform; they
49 heard someone shout "here comes a car" and turned his head and saw the car coming, couldn't turn his body because he would probably have been shoved off; was on the platform 7, 8 or 10 minutes waiting for a car; has seen military service, and as he turned his head in the other direction saw a person whom he afterwards knew to be Mrs. Dixon fall across the track; someone jumped off the platform and ran around and helped her; was standing 15 or 20 feet from Mrs. Dixon.

Q. Was there any sort of fence around the rear of this platform; any sort of means for controlling the people around this platform?
A. Not a bit.

Mr. LAMBERT: I object to that; he is entitled to describe what the situation was, and not to make comments as to whether there was this or that around there. There is nothing in the Declarations about it.

Mr. MATHER: That is all I asked.

The COURT: In the opening statement counsel said that there was no fence and I do not think it is necessary to spend any time on that point. There was no fence around it.

Mr. MATHER: All right. I do not want to waste any time unnecessarily.

The COURT: You asked him whether there was anything there to protect the people; the question was a little but objectionable on that ground, but anyway there is no necessity for it.

Mr. MATHER: Well, let it go out then.

There was no fence around it; there were a great many lights around there; they shone pretty dim he thought; whether they did not give enough light or the glasses were dirty he could not tell; but there was not so much light; the light going down the steps to the Falls was pretty good, and you could see very good coming up and going down; the light over the steps, taking a short line from the platform to the steps, was about 20 yards from the platform; the people were standing around him thickly on the platform, was standing on the very edge of the platform and people

were getting up closer and closer to him—had to take his arm; and said “look out”—felt like they were going to push him off.

On cross-examination witness testified that there had been a little flurry of rain and a good many people wanted to get back at the same time; that it was a perfectly orderly crowd, and good-natured, and were just waiting for the car to come in; he was standing on the platform about 15 feet from where he saw Mrs. Dixon go off; he doesn't know whether there were five people deep back where Mrs. Dixon was, or whether there were 20; all he
50 knows is that the platform was crowded.

By Mr. LAMBERT:

Q. You testified on November 29, 1909. I will ask you if you recall this; you were asked this question:

Mr. MATHER: Unless you intend impeaching the testimony of Mr. Beck by showing that he has testified to something different during this examination from what he testified to on either of the former examinations, I object.

Mr. LAMBERT: I would like the court to hear my question.

By Mr. LAMBERT: You were asked this question:

Mr. MATHER: I object.

The COURT: The only object in asking the question is to determine whether he is telling the same story now. Of course if it is a different statement it would be incompetent, but I presume that is the ground you were putting it on.

Mr. LAMBERT: That is correct, and to give the witness the opportunity to explain the correctness of it.

This question was asked you by Mr. Mather: “Q. How well was that platform lighted?” and you answered: “There were some lights burning; I suppose there was plenty of light, but I do not see why that has anything to do with Mrs. Dixon being shoved off.” Do you recollect that? A. I remember saying that; this testimony was true.

Q. Then weren't you further asked this question by Mr. Mather: “Q. How adequately did these lights light up the place?” and you answered: “Well I suppose sufficiently for that time of evening.” Do you recall making that statement? A. Yes; that was a fact.

Q. I will ask you if Mr. Mather took you on that occasion, after I had finished cross-examining you, and I will ask if you recall this question: “Q. What indication of shoving by the crowd
51 did you observe at the very instant Mrs. Dixon fell?” “A.

Well, it seemed as though those people right back of me wanted to see what had happened, and I came near being shoved off. A man caught me right on the shoulder.” You said that did you not? A. Yes, sir; that is true.

Q. Just an accident happened and when it happened the people began shoving around and began looking to see who had been thrown down or what had occurred? A. Yes, sir.

Mr. MATHER: May it please the court I must renew my objection

here. Not that I care about this matter coming out, but we are wasting time. There hasn't been one of the three questions asked that has the subject matter of contradiction. Now if Mr. Lambert wants this witness to testify to conditions as he remembers them now, let him ask him but not go over testimony given some years ago and then ask if this did not happen at this time.

Mr. LAMBERT: This accident happened in 1907, and this witness was testifying in 1909, which was a great deal nearer to his refreshing his recollection than it would be today.

The COURT: Does the statement there differ from what it does today? I can see that some of these questions differ because he tells them in a different way at this time.

Mr. LAMBERT: That is what I am entitled to.

The COURT: Yes, it can go on.

To which ruling of the court the plaintiffs, through their counsel, then and there took exception, which said exception was duly entered by the court upon its minutes.

When a car came up to the platform the lower step of the car might have protruded over the platform that he was standing on.

Thereupon, to maintain the issues on their part joined, the plaintiffs produced as a witness ROGER A. BLUNDON, a carpenter, who testified that he was at Great Falls when the accident happened to Mrs. Dixon; that after the illumination of the Falls he attempted to come home and went to the station and took up a position on the platform. Before the cars got in he crossed over the track and did not remain on the platform; to do so he stepped down or

52 jumped down off the platform; doesn't know how high he jumped down; about 2½ feet, something like that he guesses; had been waiting there about 15 or 20 minutes before the accident, during which time two or three cars came in; there was a pretty good crowd on the platform; could not say as to the number of people around Mrs. Dixon; they seemed to be packed pretty close; crowd seemed to be getting larger and larger; he wasn't looking in the direction of Mrs. Dixon when she fell; heard her scream, and turned around quickly and saw her lying across the track.

Q. Did you see any guards around this station?

Mr. LAMBERT: I object, may it please the court.

Mr. MATHER: I will limit it as to time.

Q. During the time you were on the station platform, just preceding Mrs. Dixon's fall, did you see any guards in uniform around there?

Mr. LAMBERT: I object. I can't see any possible relevancy in that question. There is nothing here in what this witness has stated that indicates there was any necessity for looking for guards.

Mr. MATHER: The question is whether he saw any.

Mr. LAMBERT: Yes, and I submit that is only suggestive, and an attempt to try to create some kind of impression, which is improperly being created in this case in the testimony of this witness on the stand.

Mr. MATHER: That is a curious assertion. This witness is asked as to what he saw.

The COURT: But you are trying to prove a negative situation. There is no claim that there were any guards there except those guards on the car, is there?

Mr. MATHER: Yes; the defendant company claims there were certain guards around there.

The COURT: All you can expect to prove by this testimony as you have put the question to the witness is that he did not see anybody.

Mr. MATHER: That is all I asked him.

Mr. LAMBERT: I say that is improper negative testimony. There is nothing this witness has stated so far that indicates there was anything to look for, or any occasion for a guard or anything of that kind.

The COURT: I do not think it is worth while to spend much time on that at this point. There is a question about it, too, whether it is competent or not. I will sustain the objection.

To the ruling of the court plaintiffs' counsel then and there took exception, said exception being duly noted by the court upon its minutes.

53 Being asked as to the condition of the lighting around there as he observed it witness replied that he did not know; there were two or three lights that he remembered seeing around there, and one at the head of the steps as you go up to the cars; remembers seeing two or three lights in the waiting room underneath the shed part of it, and a couple inside the room under the shed.

On cross-examination witness testified that the crowd was perfectly orderly, and he did not see anyone that was rough; there was a little rain storm that was threatening.

Thereupon, to further maintain the issues on their part joined, the plaintiffs offered as a witness HARVEY K. KNEAS, a tinner, who testified that he was at Great Falls when the accident happened to Mrs. Dixon on the platform; the platform was between 2½ and 3 feet from the ground; he judges; doesn't remember the length of it nor the width of it; at the time of the accident to Mrs. Dixon the platform was quite crowded; the crowd increased while he was on the platform; that at the time Mrs. Dixon was hurt there was a good sized crowd there; there were a few people between him and her; he was about 5 or 6 feet distant from her; that just before the accident there was a car coming in and the crowd cried "here comes a car" and then the crowd began to try and get near the edge of the platform to get on the car; the last he saw of Mrs. Dixon she was on the ground; he doesn't know whether she was pushed off or had fallen off, or what;

Mr. MATHER: Your Honor, with respect to whether this witness saw any guards, and then there is a further question I would ask,

as to whether there was any fence or anything around there to prevent people from accumulating on this platform.

The COURT: In counsel's opening statement to the jury he made that statement.

Mr. LAMBERT: It is impossible to have such a thing there.

The COURT: There is no use in asking that question. What you want to ask is whether he saw any guards.

Mr. MATHER: Whether he saw any guards there?

Mr. LAMBERT: I object to that as being absolutely irrelevant. It is a negative question.

The COURT: I see no reason why you should ask it. You may have an exception, and said exception was thereupon noted by the court upon its minutes.

54 The witness further testified the lights he saw about the station platform were right dim; they had lights but they were way far back from the edge of the platform; he does not know about the distance.

On cross-examination witness testified that he never made any measurement as to the height of the platform or step; he never made any special examination of the platform, and his recollection is from what he casually saw; the lights looked pretty dim; he could see anything he wanted to see around there, and could see the people all right; there was nothing to call his attention to the lights or any dimness of the lights—is just giving his impression in the same way that he is giving his impression of the height of the platform.

Thereupon, to further maintain the issues on their part joined, the plaintiff offered as a witness Miss CLARA E. CLEMENTS, who testified that she is a niece of Mrs. Dixon and that she was at Great Falls at the time the accident happened to Mrs. Dixon; that they had been walking and scrambling around the rocks that day and went out to Dickey's; that they watched the illumination of the Falls and then started home; that when they started home it was growing dark; it was becoming cloudy; this Sunday was a warm day; they went to the station after the illumination of the Falls; platform at the station close to the track and is the only place for stepping on and off the cars; doesn't know how long it was; judges it was three or four feet wide.

Q. What height was the top of the platform from the ground, if you know? A. I guess it was two or two-and-a-half feet.

The COURT: Have you not that measurement exact here?

Mr. LAMBERT: We have it exact by two engineers and by the physical fact, but these witnesses seem to be always asked what they imagine.

The COURT: There doesn't seem to be any dispute about it, so it seems to me you should agree about it and ought not to ask these witnesses to guess about it.

(After further colloquy and discussion between counsel and court.)

55 The COURT: Go on. If you can't accept the other testimony. I thought if you had positive testimony as to the measurements there was no use taking up time guessing about it.

Mr. MATHER: No, sir. If those measurements were accurate I would not question them.

(WITNESS:) She and her cousin got down off the platform and crossed the track to the other side to see if the car was coming. The ground sloped towards the Falls; a right good little slope; doesn't remember any lights around the platform, only the little cluster back under the shed; the lighting was indifferent; it did not light up very good; when first got to the platform there was a large crowd there, and they were still coming up—a large crowd coming up from the grounds; waited there before the accident 20 or 25 minutes, during which time two cars came in and went out, and they were so crowded that we did not take them; had left Mrs. Dixon four or five minutes when the accident happened—when the platform was crowded; didn't pay any attention to the platform after crossed track; didn't observe Mrs. Dixon or the platform during these four or five minutes; when she left Mrs. Dixon's side had noticed that the people were gradually pushing up over to the edge, as the crowd came up; the crowd increased; the pushing was worse when the cars came in and went out; the crowd pushed worse then; just as the accident occurred someone hollered that the car was coming, and he looked up the track and saw the headlight of the car and saw Mrs. Dixon on the track.

Q. You say that while you were waiting for a car to come home two cars came in which you did not take. Why did you not take those cars?

Mr. LAMBERT: I object. She said in direct-examination that while they were standing there talking two cars came in and people got in ahead of them, and they were crowded and they waited for another car. I submit that has all been covered.

Q. Did you or did you not see any pushing or shoving as to those prior cars?

Mr. LAMBERT: I object. The question in the first place is leading. She has been taken all over this ground as to what she observed, and she has undertaken to describe just what the conditions were as they impressed her. Now, to ask this suggestive, pregnant question, "did you not see", or "did you see" this particular thing, I submit is improper.

The COURT: Yes, I think this is improper.

Mr. MATHER: Objectionable as to form, may it please the Court?

56 The COURT: As to what occurred before then.

Mr. MATHER: The Court of Appeals, your Honor, has held that I have a right to go into the pushing and shoving that occurred at this station platform prior on the evening of the happening of

this accident, and that is particularly the point I wish to bring out from this witness.

After further colloquy between counsel the court directed that the answer be taken.

(WITNESS:) There was a large crowd there and the cars were just packed, and the crowd rushed for the cars to get on the cars;

The COURT: Can't you assume that was the fact, anyway, Mr. Mather, without spending any further time on it? Here was a large crowd of people who wanted to get home, and the crowded car.

Mr. MATHER: If I can assume that I am perfectly willing.

The COURT: You have to assume some things in a trial.

Mr. MATHER: It is the averment of negligence here, and I suppose Mr. Lambert will be crying out about my not proving it sufficiently.

The COURT: If he proves that that crowd was not pushing and shoving to get on to that car, then you may put in some rebuttal, perhaps, but I think you can assume that in the first place.

Mr. MATHER: Al- right, your Honor. If I can put in rebuttal.

The COURT: The crowd wanted to get home.

Mr. LAMBERT: We do not controvert it at all. The crowd wanted to get on the car. It is human experience.

Mr. McMAHON: Will you admit on the record that there was pushing and shoving?

The COURT: I suspect Mr. Lambert will argue that your client, as well as everybody else, was participating in the pushing and shoving.

On cross-examination witness testified there was a little storm coming up. That after she was standing on the platform about 20 minutes she and her cousin stepped off the platform to get across the track, her cousin stepping off first; they stood on the opposite side looking for a car and she did not notice the platform at all, either before or after the accident. Her testimony as to the height of the platform being 2 or 3 feet is the impression made on her mind; she has never been there since, nor did she go to ascertain the height of the platform; when she stepped down couldn't see the ground, and did not know how high it was until she stepped down; didn't pay any attention to the cars as they approached the platform to ascertain whether the lower step protruded over the platform, nor did she pay any attention to the surroundings there, as to how many benches were there or what places there were for people to sit on; she did not have any trouble in seeing people around there; there were two or three cars came in there after Mrs. Dixon got hurt.

Thereupon to further maintain the issues on their part joined, the plaintiffs offered as a witness CLARENCE G. BREMMERMAN who

testified that he was at Great Falls when Mrs. Dixon was hurt;

57 that it was on a Sunday, and was a hot day; that towards dark

it got kind of cloudy and dark; after watching the illumination of the Falls he went to the station platform where he remained about 20 minutes, during which time two or three cars came in and went out; at that time there was a large crowd on the platform; some assembled on the platform, some down at the track and across the

track; crowded all around there; adjoining the platform was a small waiting station and a little place where soft drinks were sold; thinks there were some seats there.

Q. Can you tell us about how long this platform was? A. I guess it was about 50 feet long; about 3 feet wide; and about $2\frac{1}{2}$ or 3 feet high along there.

The COURT: Isn't this all guess-work with this witness? Did he make any measurements at all?

Mr. MATHER: No sir, but he had an opportunity of forming a very good idea as to just what the dimensions of these places were.

(After further colloquy between counsel:)

The COURT: The platform was measured and witnesses were put on the stand and cross-examined about it. I do not think you ought to take up time, Mr. Mather, in questioning witnesses who are merely guessing as to the measurements.

Mr. MATHER: Al- right, Sir.

(WITNESS:) When the cars came in that he did not take, the crowd were all excitable and pushing there. They wanted to get on the car; everybody seemed to be excited; was about 3 or 4 feet this side of Mrs. Dixon; maybe more than that; there was a large crowd actually present on the platform at the time Mrs. Dixon fell; the people were very close; standing there close together; everybody said there was a car coming, and we thought we would get on the next car, but there were so many getting in and out that we thought we would take the next car; everybody seemed to be excited there and wanted to get on it; when the cry that the car was coming was made everybody seemed to be moving about there and squirming and twisting and trying to get on, I suppose, when it came in; when he looked up Mrs. Dixon had fallen across the track; everybody
58 seemed to be excitable there, and squirming around there on the platform; it was all he could do to stay on the platform himself, on account of standing on the edge of it, by the way people were squirming around on it, during the time he was on the platform.

By Mr. MATHER:

Q. Mr. Bremmerman, during the time you were on this platform did you see any attempt made to regulate or control the number of people who assembled on that platform? Don't answer the question until there is a chance given counsel to object.

Mr. LAMBERT: I object, may it please the court.

The COURT: I think he may answer that.

Mr. LAMBERT: I object on the same ground that I did yesterday. Further, that there is no evidence here that there was anything to regulate.

The WITNESS: I didn't see anybody there to control the crowd.

On cross-examination witness testified that the crowd seemed to be good-natured; a little storm was coming up and a lot of people seemed to have the idea that they wanted to get in at the same time;

did not hear any rough talking or see any disturbance; took notice of the high step there—at a glance; while talking there all were anxious to get on the car; two or three cars came in but they were so crowded could not get on them.

Thereupon plaintiffs, in order to further maintain the issues by them joined, offered as a witness JAMES A. WILSON, who testified that he was at Great Falls when Mrs. Dixon was injured; that after the illumination of the Falls a storm was coming up and everybody started leaving the Falls going up to the Station; to the best of his knowledge the platform was not lighted up very much, from what he can remember; thinks there were two or three lights up in the peak of the platform; he should say that the platform was about two feet six inches high, to the best of his knowledge; that he has been working with a rule all his life; he never measured it but he stepped down from it and noticed it after the accident; he was on the platform a half hour more or less before the accident and two cars came in and went out; we couldn't get on those cars; he could have gotten on himself, but there was a party and we could not get on them; when we first got on the platform there was not such a big crowd, but it seemed the longer we stood there the crowd grew; the crowd increased about 3% of what was there at first; noticed the platform was crowded but doesn't know of anybody shoving him; knows the people were all packed around him; heard Mrs. Dixon cry out and then she was in mid-air falling; just at that second everybody rushed

59 to where Mrs. Dixon was; there was a car coming in and when Mrs. Dixon fell we were all rushing for this car and platform after it came; the car was about 75 feet away when Mrs. Dixon was falling; the car was running still; when every car came in people were hollering "here comes a car;" "let us try to get this one," or something to that effect.

Q. Did you see at this station anybody controlling the number of people that were accumulating on this station platform?

Objection by defendant.

The COURT: Let him answer and you can have an exception, Mr. Lambert.

WITNESS: No sir; I don't remember seeing anyone there.

On cross-examination witness testified that the benches were scattered around the shed; did not pay any attention to the height of the platform more than what he thought was the height; didn't undertake to measure anything there, as it did not enter his mind; saw Mrs. Dixon when she was falling in mid-air; did not have any disorder in the crowd to his knowledge; there was nothing to call his attention to the conditions there except that the people wanted to get back to the City on account of the threatened rain.

Thereupon the plaintiffs, to further maintain the issues on their part joined, offered as a witness ROSA KENDRICK, who testified that she was at Great Falls with her daughter and on the platform at the time of the accident; that after seeing the illumination of the Falls

she went to the cars to get on and go home; went to the platform and waited may-be a half hour; that no cars came in during that time; the crowd on the platform was a very large one,—maybe 500 people—it might be more; they were all pushing when the car came up; knows everybody was pushing to get on the car; there was a great crowd pushing there; everybody wanted to get on the platform and they would push and push and they pushed that lady off.

Mr. LAMBERT: I move that that go out.

The COURT: Yes, she is stating that as a conclusion.

Q. How close to this stout lady were you standing? A. I was standing behind her.

60 Q. How far behind her? A. Just behind her. Just one person behind her.

By the COURT:

Q. You were not pushing her, were you? A. No. I *were* not pushing her. They were pushing me too.

By Mr. MATHER:

Q. You say they were pushing you? A. They were pushing me too.

Q. And you were immediately behind Mrs. Dixon? A. Yes, I was behind her because people were pushing behind me too.

Q. Then what happened? A. She fell down on that track when they pushed her off.

Mr. LAMBERT: I object, may it please the court, about them pushing her off. It is a conclusion.

Mr. MATHER: Not at all. If this witness was in a position to see.

Mr. LAMBERT: She is volunteering that. Let her tell what happened.

Mr. MATHER: She is telling what happened. That is what hurts you.

Mr. LAMBERT: It does not hurt me at all. She comes in here and undertakes to give a conclusion as to them pushing her off. I move that that go out.

The COURT: Yes, that will go out. She can state what she saw and heard there at the time. Let the jury draw their conclusion from that.

Witness further stated that the people were standing there waiting for the car to come in; that it was a long time waiting; many people were saying "it is so long coming in"; this pushing and shoving continued for maybe fifteen minutes; maybe a half hour; she doesn't know; no longer than a half hour she knows because there was a terrible big crowd there.

On cross-examination witness testified that her daughter was with her standing beside her at the time; does not think it rained; does not know how many people were between Mrs. Dixon and herself; does not know whether there were ten or a dozen, as she wasn't paying any attention; that Mrs. Dixon was standing in front of her;

there must have been 300 or 400 people standing around the platform and all around there; they were very thick; did not touch Mrs. Dixon; didn't take hold of her at all; never spoke to Mrs. Dixon in her life; says both daughter and herself were standing just
61 behind Mrs. Dixon; doesn't think anybody was between Mrs. Dixon and herself, and she did not touch the lady that she knows of; when Mrs. Dixon fell was looking in front not particularly at Mrs. Dixon.

Thereupon, to further maintain the issues on their part joined the plaintiffs offered as a witness Mrs. CATHERINE B. SNYDER, her daughter, who was at Great Falls at the time of the accident; that she was waiting about 20 minutes on the platform and there were two or three cars came in and went out; when they first went to the platform it was packed with people and afterwards the crowd kept increasing; she and her cousin stepped down from the platform and went on the other side of the track; had been over there about five minutes when her mother fell; Mrs. Dixon had been standing about 6 inches from the edge of the platform; while on the other side of the track was looking at her mother every two or three minutes; the people were packed all around her when she saw her a little before she fell across the track.

On cross-examination witness testified that they started back to the platform from the grounds because it was clouding up as though it was going to rain; crowd started at the same time; there were quite a few people across on the other side of the track; heard somebody holler that the car was coming; saw the car about 100 yards down the track; after she fell this car came right in and they had to holler for it to stop; after her mother was hurt a couple of cars came in and went out before Mrs. Dixon was put on the train.

Thereupon, to maintain the issues on their part joined, the plaintiff, ROBERT A. DIXON, took the stand and testified to the serious injuries of his wife, her pain and suffering, and his consequent loss of services, together with the expenses he was put to for medical attention, medicine and nursing.

Thereupon, to further maintain the issues on their part joined, the plaintiffs offered as a witness, Dr. THOMAS J. GATES, who testified that he was a dental surgeon, and was at Great Falls
62 station at the time Mrs. Dixon was injured; that after he saw the illumination of the Falls after dark several times went up towards the place where you take the car but decided to wait until the crowd got away; that he had his wife and children there; there was a great rush around the cars; there seemed to be a crowd around the cars from the time he landed there. There were people trying to get home when he arrived, and the crowd continued; there were not enough cars to bring the people away; didn't go entirely to the platform; went up near enough to observe the terrible crowd and went away again, as he wouldn't take his wife and children in that crowd; doesn't recollect about seats in

the shed, although thinks there were seats off on one side; didn't notice particularly with reference to the height of the platform from the ground, as a man would have to observe very closely to be able to say how tall it was, but remembers the rough condition of the platform as between the rails and the platform there was a place in there—a space down in there between the railway track and the platform, 6 or 8 inches or may-be 10 inches deep from the platform at the edge of the rail.

On cross-examination witness testified that on the occasion of the accident there was some made dirt between the rail and the platform and this space was in that; this track ran down hill, and where it stopped it had been filled up underneath; the railroad had been raised up; witness was then asked whether his testimony on the former trial of this case to the effect that he took no notice of the length of the platform but imagined the height of it varied from 8 to 12 inches, somewhere along in there, was correct, and he said yes; witness further testified that his best judgment is that the step or platform was about 8 or 12 inches above the rail; that when he came to the station after the illumination of the Falls he did not go very close to the platform; he could see a good distance; the place was illuminated; you wouldn't have to go right up to the station to see for there was a crowd of people there; it was quite brilliantly lighted there; there was plenty of light there; he could observe the cars at the station from down in the grounds.

63 Thereupon plaintiffs to further maintain the issues on their part joined offered the testimony given by THEODORE J. KING, at the former trial of this case, he having since died, said testimony being to the following effect:

That he was the chief engineer and superintendent of the defendant in August of 1907; that counsel for the defendant had had notice to produce certain records, books, papers, etc., showing the number of cars used, the schedule, the number of round-trip tickets and the individual returns of each conductor as to the number of passengers returned under his care from Great Falls to Washington on August 25, 1907; that witness had received word there was some different data required, but he did not have any definite information as to what it might be, and could not tell what could be produced until a search was made; that they only keep certain permanent records; other records they have stored in various places; and the only ones they keep are a close record of certain matters in certain books which they have, which show the receipts from the day; witness had made a search for the conductors' returns and had not been able to find them; that 2,700 or 2,800 people were present at the Falls on the day the accident happened, which information witness obtained from defendant's cashroom book, which was a permanent record; that the seating capacity of defendant's cars was 44, and their length was 44 feet; has not the schedule they were running on that day; does not keep them; they are destroyed; that the defendant railway company expected larger crowds on Sundays and holidays than on other days, and had had many heavier crowds than

on this particular Sunday; that good Sundays in the Summer time during June, July and August are the heaviest days, barring the fourth of July and Decoration Day and Labor Day; holidays, too, come heavier than Sunday; that the double track had been in use some little time.

On cross-examination witness testified that on the night in question they had all the lights turned on, there being 24 incandescent lights at the depot; that cars were run on an average that Sunday of from 10 to 12 minutes, and at times at 8 minutes; that 2 cars composed a steam train, which cars had the same seating capacity as the electric cars, and that the defendant had 3 steam trains in operation that day, making as many trips as were required during the heaviest travel of the day, and until everybody came away from the Falls at night; that when the crowd slackened off, the defendant would have a steam train waiting on the siding until some such time as a bunch of people gathered at the place; that much larger crowds had
64 been in attendance at the resort, for they had 1700 more on July 4, and on one Sunday they — 200 more, and on Decoration Day had something like 200 more.

Thereupon counsel for the plaintiffs called for the papers and records, cashroom book or books designated in a "Notice to Produce," showing the number of trains and the number of single cars dispatched and used, the schedule on which they were run, the number of round trip tickets, the individual returns of each conductor as to the number of passengers returned under his care from Great Falls to Washington, and the actual number of fares collected from passengers going to and returning from Great Falls on August 25th, 1907, which the defendant refused to produce, claiming that the defendant did not keep any of said records except such as showed the number of round-trip tickets from Washington to Great Falls and return.

Thereupon the plaintiffs to further maintain the issues on their part joined offered the testimony given by LILIAN R. STANSBURY, at the former trial of this case, she having left the District of Columbia sometime ago and her present whereabouts being unknown, as follows:

She is a saleslady for J. L. Leverton and was at Great Falls on the day Mrs. Dixon was injured; she started to come home about 7:30 or 8 o'clock, after she had seen the illumination of the Falls; she was with her mother; when she got to the platform, she found a very large crowd and waited; there was a car going out as she got there, and they waited for several cars to get on; just as they started up and got up on the platform, there was a very large crowd, and everybody was pushing and shoving to get on the car; witness and her mother were right on the edge of the platform, and the crowd was so great there that Mrs. Dixon was a little ways from me, and she was pushed off; witness did not know Mrs. Dixon at that time; she was attracted to her because Mrs. Dixon was so stout; witness' mother was stout. That the lights were not very good; five feet from the platform you

could not see your hand before you; we were waiting on the platform about twenty minutes; a car was going out as witness and her mother got to the platform, and thinks two more went out while they were there waiting; went to the platform to get the cars to go home; it

65 was the only place you could get a car from; did not get on either on- of the two cars that came in and went out because there was such a crowd that we could not get the car; the platform was pretty long and right high,—doesn't know just how long or high it was—should judge you had to go up about three or four steps to get to the top of the platform; it was about that wide (indicating about three feet) and about that high (indicating about 4½ or 5 feet); there *there* was a very large crowd there,—very large. They were pushing and shoving terribly; they were pushing so that witness had to push several people that were back of her, back, to keep from being pushed off herself. Mrs. Dixon was just a little ways from witness, and the crowd was so great and pushed so, that Mrs. Dixon was pushed off. Witness came very near being pushed off herself. Just before the accident to Mrs. Dixon everybody said "Here comes a car," and made a rush for the car, and it was then that the accident happened; they all made a rush for the car and just as soon as I turned around she fell right off the platform; they all pushed her so. "I had just happened to turn around and glanced around the crowd, because they were pushing so, and asked several people not to push; and I noticed her on account of her being so stout, and my mother was stout too, and I thought we would all go over. She was standing a little *wasy* from us; I don't think I saw her when she fell, right down at that minute, because I was trying to help my mother along, and I didn't notice at that moment, until she landed on the track." Witness did not see any guards around there controlling the crowd; didn't see a soul except the people that were pushing to get on the car; didn't see any fence with a gate to it or anything at all that could keep the people away from crowding on the platform.

On cross-examination witness testified that she first saw Mrs. Dixon standing on the platform; that she had never seen her before until she was standing up on the edge of the platform; that Mrs. Dixon was there on the platform when witness first got there; that she never noticed who was with her, there was such a crowd around; that witness had been out to the Falls once before and got off on the ground not on the platform; it was a very steep step, and several gentlemen had to help her mother and herself down to the ground; the platform was even with the step of the car; that just as she got up to the station a car left, and while she was standing from about—between twenty minutes and a half hour we were there,—she does not just remember—two other cars came in and went out; she remembers testifying at the former trial that cars went out within about fifteen minutes, or a little longer; did not know exactly; does not know how much longer Mrs. Dixon had been up on the platform before witness got there, but knows she was there the whole time witness was on the platform; that her

66 attention was first attracted to Mrs. Dixon when she fell; she stood on the platform and saw the cars back up for people to get on; the motorman or conductor would be on either end of the car trying to regulate the people the best they could but they could not, and they would not let anybody get on until the car was stopped, when they got on and off from both ends of the car; that everybody was out of the car before they started to get in; it was an awful dark night,—an unusually dark night, a very dark night—doesn't remember anything about a storm; there were good many trees there after you got down to the grounds at the Falls; means that after you get five feet from the platform you could not see; if you were standing right under the lights at the station you could see pretty well.

Thereupon the plaintiffs to further maintain the issues on their part joined offered the testimony of Drs. WILLIAM C. GWYNNE and THOMAS D. MUDD; the testimony of Mrs. ANNIE BARNACLO; Mrs. J. R. DIXON and Mr. WILLIAM H. STANT who all testified to the serious and permanent injuries of the plaintiff Mary L. Dixon and the pain and suffering she had experienced as the result of these injuries:

Thereupon the plaintiffs to further maintain the issues on their part joined offered the testimony of the plaintiff MARY L. DIXON taken in this case at the former trial, on account of her being unable to attend on the court during the trial and give her testimony anew; that she was hurt up at Great Falls Station platform on August 25, 1907, after having been there for some hours with her daughter and niece picnicking; she had bought a round-trip ticket to Great Falls on this hot Sunday in August; they were hurrying home and the clouds commenced to rain and it kind of got drizzly; that they went up on the platform and when they got there of course everybody was rushing home; it was dark,—getting dark, you know and it looked as though we were going to have a storm, and then plaintiff went up on the platform, just two steps, and went out towards the front of the platform and thought she would be there when the car came in and could get on the first car that came in, but everybody rushed in front of her, and of course, she stood back and would not go out; there were one or two, or three cars which came in and went out; and we stayed there because we could not get a car, the crowd was so great. Plaintiff was standing right on the edge of the platform while her daughter and niece had stepped off had gone over on the other side of the track; "of course I was standing right there and the crowd still pushing up, waiting for a car to come, and everybody was rushing who should get home first, like it is at any other place, and then I felt that somebody
67 certainly was pushing against me too heavy, and I tried to push myself. I was facing towards the car, and I tried to push my foot back and get a better stand against him, and they rushed right against me, and over I went, and that is the last I knew." Thinks the platform was from 2 to 3 feet high "because

it had two steps to go up;" "the ground was a little kind of sloping," does not know anything about the width of it, could not tell, because people were all crowded on it; you could hardly see it was a platform; there were so many people on it; thinks the ground was a kind of sloping, but you know, of course, the people when the cloud commenced to get dark, they rushed up all over the yard and the place, and you could not tell hardly how the crowd was, and I was excited to get home because we were by ourselves, and I did not like to be out late by myself; the ground sloped off towards the Falls; was on the platform about ten or fifteen minutes before she was hurt; thinks two or three cars came in, "but you see as soon as everybody rushed right up and stood, all kind of jumping on top of one another, as soon as a car came in, they were loaded and went right off, and another would come in, and that was loaded, and it went out, and still the crowd was making upon the platform and you could not get any chance to get your way up there for the people pushing and shoving, and you could not make no headway; there was pushing and shoving every car that came in, everybody wanted to get on first; somebody holloed that the car was coming, and plaintiff was hurt directly after that; of course, as soon as they holloed that the car was coming, everybody rushed, and somebody,—I don't know who it was—caught me right in the back, you know; I was standing with my face towards the track, and they came and pushed forward, and, of course she tried to push back against them, and she went right face foremost, right out on the platform on the car track. "When I first went up on the platform, I was quite a distance from the end of it, but as the rush came and kept pushing me forward of course I had to go back, every time; they would come against me and push me back a little further, but when I realized I was so close to the edge of the platform I tried to get myself a little step back, you know, just pushed my foot back and tried to keep my balance and somebody caught me right around my waist,—I could not say who it was, whether a man or a woman—and just kind of pushed me and let go of me, and I went face forward right there; but there was such a jam you could not tell who was and who was not. It was clouding up, and everybody even from away around the rocks had all gathered in, coming in before we started home.

Q. Did you see any guards or anyone of that sort out there? A. No sir; I never seen no guards or nothing like that; just the conductor and motorman.

Q. Did you see any attempt from anybody to control the crowd that was there? A. No. I never seen anybody.

Q. Was there any attempt to control the crowd on that platform? A. None at all; they just let them push and shove.

Plaintiff further testified that she was confined to bed and chair as the result of this accident, and her sufferings were eternal. She also testified to what her service to her husband was prior
68 to the accident, and how that had all ceased since.

On cross-examination witness testified that she had bought one of the twenty-five cent round trip tickets for the Falls, and after

she had left the merry-go-round the storm was starting and a good many other people seemed to be starting at the same time; that when the plaintiff walked up to the station never saw such a crowd as when she reached there. Of course, they kept coming on; a car had just started out, and witness walked around back and took two steps up on the platform; remember daughter and niece leaving her and stepping down on the track and going over to the other side of the track; that her daughter said to her "Mama, you stay here, and we will go and look and see if a car is coming"; thinks there were two cars after the first one she saw go out; that plaintiff was looking at her daughter and niece as they stepped off talking to them and they stepped right in front of her, and watched them as they went over across the track, she had the three tickets and they had to come back to her to get the tickets.

Q. When they left you to go across the track, how near were you to the edge? A. Right smart little distance; but after they left me, the crowd kept pushing up on me.

Q. Your daughter's recollection of it was that you were about six inches from the edge when she left? A. Well; I guess maybe I was, yes, sir.

Q. You remained in that position except that you got a little nearer to the edge? A. Yes; of course, they kept pushing and pushing.

Q. Did you say anything to anybody behind you? A. Yes; I believe I did; I asked a gentleman not to push against me so badly, but then in the instant I felt somebody put their arm right around me and push me, and down I went.

Q. Put their arms around you? A. Took me kind of around the waist and pushed against me.

Q. Was that a lady or a gentleman? A. I could not tell you.

Q. It was somebody, some particular individual who did that? A. I don't know whether it was one person or two persons. I guess it was one person.

Q. What was your weight at that time? A. About 200 pounds, but I was as active as though I did weigh but a hundred.

Q. You were standing then right at the edge of the platform with your back against everybody else. In other words you were facing the railroad track? A. I was facing the railroad track, and was not standing sideways.

69 Q. So that to attempt to brace yourself at all, you had to put one foot or the other forward? A. No I did not; I tried to push it back.

Q. You had to put it either forward or backward? A. Yes, and of course, I knew I was so close there I had sense enough to know not to put myself forward any closer to the railroad. I was trying to keep myself back.

Q. When you put your foot back and it pushed against somebody, didn't they complain? A. They did not complain, but they kind of caught me here and give me a kind of a push, and everybody was pushing.

Q. As a matter of fact, you were close to the edge, and you took

one of your feet, and instead of putting it forward you put it back, and pushed against somebody? A. I tried to balance myself, as anybody would when they knew they were going to be pushed off.

Q. And when you did that whoever it was took hold of you and gave you a push? A. Yes; and the crowd was all pushing one against the other.

Q. But you are speaking of some individual. You were standing and put your foot back and pushed against somebody and you don't know who it was? A. No, sir.

Q. And then it was that person took hold of you and gave you a push? A. Yes; they were all pushing.

Q. This particular person took hold of you? A. I felt somebody's hand against me, it might have been two people, I did not look behind, because I was scared then when everybody was pushing and rushing forward like that. It might have been two people took hold of me, I do not know.

Q. You don't know whether it was one or two? A. No, sir.

Q. Either one or two persons put their hands on you? A. Certainly; I don't know how many it was, but I felt that somebody took hold of me and pushed.

Q. You knew the car track was there? A. O, yes, and cars were coming up and down.

Q. Is it not a matter of fact that when you were standing there you felt this pushing, and you took a step backward and pushed somebody, and also took a step forward? A. No; I never took a step forward.

Q. You testified when you were here before at this trial? A. Yes, sir.

Q. Here is a question I asked you on that trial, and see if you can recollect it. I am asking you why you say in your Declaration that you took a step forward on what appeared to be a continuation of the platform, when you knew there could not be any platform there, because you were within six inches of where you say the car came in. Why did you say that? A. "Because I thought when I made that step,—I didn't give any thought." Is that true? A. No, I made a statement that I made a step backward.

70 Q. Didn't you testify as I have stated? A. No; I never said a step forward.

Q. You did not use the language that I have used? A. No; I never said that. I tried to push myself backward, but I never said I made a step forward.

Q. You remember when you filed your first suit, you remember stating in it that you took a step forward on what appeared to be a continuation of the platform, didn't you? A. No; I don't know anything about any continuation of the platform. I don't remember.

Q. Now I will read you from your Declaration in the suit you first filed.

Mr. MATHER: How are we concerned with that? We are trying this case on the amended Declaration. Objection.

The COURT: If you take a different theory from the one you had

at first, is not counsel entitled to inquire about it on cross-examination to see whether her first theory is correct or not. Objection overruled.

To which ruling of the Court plaintiffs' counsel then and there took their exception, which was duly noted by the Court upon its Minutes.

By Mr. LAMBERT:

Q. This Declaration which has been referred to, you filed, and I will read what you say (reading from the original Declaration). Now I ask you whether or not that is true as you state in that paper, which you first filed here and brought your suit on, that you took a step forward to preserve your equilibrium on what appeared to you to be a continuation of the platform?

Question objected to by Plaintiffs' counsel; overruled, and exception then and there taken and noted by the Court upon its Minutes.

A. I guess if it is there, that must have been the way of it.

Q. Now I read you further from your testimony at the last trial in which you were asked this question: "Q. You say here it appeared to be a continuation of the platform you were standing on. If you did not have any thought about it, how was it that idea was in your mind? A. I don't know, but still I give that step, that little step, just a half step, to kind of strengthen myself against the crowd, and somebody, of course I could not say who, hit me in the back, and I went face foremost right across the track." A. Nothing hit me, but pushed me.

Q. Well, pushed you. That is correct, isn't it, that you testified to that? A. Yes, sir.

Witness doesn't remember saying immediately after the accident, that it was all her own fault and that she had made a misstep.

On redirect examination plaintiff said she might have
71 made a half step forward, she could not say, and neither could she say how hard a push it was; of course everyone was pushing one against the other. It seemed to her when they pushed against her, it was a powerful push, just rushed right against her and over she went.

On recross-examination Mr. Lambert asked:

Q. You expected to follow your daughter across the track, didn't you? A. No, sir.

After which the plaintiffs rested.

72 Thereupon the defendant railway company, in order to maintain the issues on its part joined, offered as a witness HUGH FITZHUGH, who qualified as the Assistant Engineer for the defendant railway company and produced a plat which he made May 30th, 1911, and after stating that he was not at Great Falls at all in 1907, and did not make the plat from measurements he had taken, stated that he had made it from a blueprint; witness further stated that he could not tell whether the plat showed the conditions that existed at Great Falls at the time it was made because he never

took any measurements to take it by; that the blue-print showed the station up there, the building and shed, the platform and tracks, and electric lights, the location of the station building and the electric lights in it at the Falls; that the plat in question was an enlargement of the blue-print which was shown him.

Mr. LAMBERT: I propose to show that at the first trial of this case I had this blue-print and I had the testimony which is in the record, which I propose to introduce, of Mr. Mackall, who was the Engineer in Alexandria County, at the time—the County Engineer I think he was—and he made this as the conditions existing in August 1907, and so testified. I simply want this witness to identify that enlargement as having been made from this blue-print. I propose to follow it up with the testimony of Mr. Mackall, showing it was made as of the conditions at that time.

Mr. MATHER: That would be all right, may it please the Court, if this blue-print be the blue-print used at the trial and further if it be shown that this blue-print, which as my recollection serves me was made in July, 1909—over two years after the happening of this accident—represents the physical conditions as they existed at the time of the happening of the accident.

Mr. LAMBERT: I have the testimony of Mr. Mackall, Vol. 1, in which he identifies this map as having been made by him, and that it represented the conditions as they existed some two weeks before the first trial, which was in November 1909, and I propose now to show that between 1907 and 1909 there were no changes at Great Falls.

Whereupon WILLIAM M. ARMSTRONG was produced as a witness for the defendant to maintain the issues on its part joined, and testified that he was foreman at the Great Falls park; that he was there in August 1907 and there in November 1909; there were no changes made to the structure or the tracks that he remembers; that he was there all the time and is pretty sure there weren't any changes made during that time; that the loop was completed after 1907, sometime about 1908; doesn't remember whether it was in August of 1907; was not using it at the time the accident happened; we had been working on it, but doesn't remember whether it was completed; completed shortly afterwards; that in relation to
73 the station platform and the station itself, and the bringing up of the cars and all there was no difference between 1907 and 1909.

On cross-examination witness was asked when the loop was put in and cannot tell when it was finished; knows we were not using it in August of 1907 when the accident happened to Mrs. Dixon, but were using it shortly after that; doesn't remember just how long, whether it was that season or the beginning of the next.

Q. Can you tell us whether you had started on the extension of your track at the time Mrs. Dixon was hurt? A. I beg pardon—

Q. Can you tell us whether you had started on your extension of track beyond this station— A. (Interrupting.) Yes sir.

Q. (Continuing:) After Mrs. Dixon was hurt? A. After? No,

was started on it before; doesn't remember how much before, or just how far it was completed; isn't sure whether extended all the way around or not. Thinks it extended all the way around the loop. Isn't sure. No grading done after the extension of the tracks.

Whereupon Mr. J. R. FRANKLIN, testified that he was in the employ of the defendant and was familiar with the conditions at Great Falls in 1907; was assistant to superintendent; that he has read over the testimony of Mr. Mackall, and knows he made the plat in 1909 of the conditions at Great Falls; kept the records in his possession for several years; that the blue-print handed him was the blue-print from which he made the plat; that it was Mr. Mackall's signature down in the right-hand corner; that it is an enlargement of what was used at the first trial.

On cross-examination witness says he knows of his own knowledge that the plat used at the first trial was an enlargement of the particular blue-print then in his hands;—that he didn't know that the first plat—the one used by Mr. Mackall—showed where the steam train went up the siding or showed the extension of the platform, and indicated the place where the guards used to jump the incoming cars and accompany them down; that he is positive that the blue-print there before him is the exact reproduction of the plat that was used originally.

74 Whereupon and further to maintain the issues on its part joined, the defendant offered a portion of Mr. KING's deposition as given during the first trial to the effect that that plat represented the general lay-out and conditions as they existed August 25, 1907; there had not been any change at Great Falls that is not shown in the plat used in the first trial; none whatever; Neither lights, nor platform nor building.

Whereupon defendant, to further maintain the issues on its part joined, offered the testimony of BENJAMIN F. MACKALL, taken at the first trial of the case, he being dead, as follows:

Civil engineer, over 25 years, made map about two weeks ago; scale 5 feet to the inch, that is the horizontal section; vertical section 2½ feet to the inch; the platform for passengers to get on and off cars is 96 feet long, 3 feet 10 inches wide; on the inside of the platform there is a step 6 inches high, making the platform 1 foot in height; the step is 11 inches wide and runs the length of the platform; the small red circles on the map are incandescent lights, and the large ones are arc lights; between the platform and shed there is a cinder walk; there is no return track there; the car goes around the loop; the near rail of the track is 2 feet 1 inch from the platform; when the car moves along the track doesn't know how near the step of the car is to the platform; there is an additional platform up by the spur track shown here, (indicating); about 150 feet above the station platform.

Q. When the car comes in how does it come? A. A car coming from Washington comes this way (indicating) and stops here (in-

dicating) and then on leaving it comes right around and joins this track (indicating) about 150 or 200 feet from there.

Q. That is the main track? A. Yes, sir.

The top of the rail is $4\frac{1}{2}$ or 5 inches from the ground; from the top of the railroad tie to the platform is about 9 inches; from the top of the platform to the ground is 12 or 13 inches; in answer to question by the court witness says platform is 3 feet 10 inches in one place, and 2 feet 10 inches at the little end in width.

75 On cross-examination witness says that there has been no change out there from last July; measured again about two weeks ago; from the top of the platform to the natural surface of the ground as it now exists is 1 foot.

Whereupon the defendant, to further maintain the issues on its part joined, recalled HUGH FITZHUGH, who testified that the plat he had was the enlargement of Mr. Mackall's blueprint; that its heavy line represents the enclosed part of the depot, that is the part surrounded by walls; this part out here up to that point (indicating) was an open shed and roof with no walls; that at the time he became connected with the company the ground there was made of cinders; points out the wooden platform extending along the rails; the small red circles represent incandescent electric lights, while the two large ones represent arc lights; says they are 2,000 candle-power lights; that the others were 16 candle-power as he has been told; couldn't say of his own knowledge as to what the smaller ones are because they are subject to replacement so easily.

On cross-examination witness says that he cannot tell about the larger lights with absolute definiteness; that he could say it was generally understood that those lamps had not been changed; that he is reasonably familiar with arc lights. That the line representing the track represents a single track, the two rails being drawn separately; witness has no personal knowledge whatever as to the candle power of those lights and has no personal knowledge as to how many of these lights there were, not having been there at the time; that since he has been there there have been very considerable changes made in the lights; that he first went there with the defendant in 1910.

Whereupon the plat in question, purporting to show the exact physical conditions existing in August of 1907, was offered in evidence by Mr. Lambert for the defendant company, and being objected to as not having been properly proven up, was admitted by the court, to which ruling of the court the plaintiffs then and there took exception, which exception was duly noted by the court upon its minutes.

76 Whereupon the defendant further to maintain the issues on its part joined, produced R. S. TRAMMALL, who testified that he was an employe of the defendant company, and was in their service in August of 1907; night watchman with hours of duty from 6:00 at night to 7:00 the next morning; was riding cars that

day at the station; when not so engaged was standing around the station there to keep order; was standing on the corner of the enclosed part there at the time of the accident, and someone cried that there was a car coming; that he looked around the corner but seen no car coming; about that time there was a lady walked over the platform into the middle of the track and witness and some other fellows cried she was hurt; afterwards learned her name was Mrs. Dixon; witness had been standing there ever since the car before that went out; suppose about 5 or 8 minutes, probably; his duty when the car was coming in was to go to the upper platform and ride the car to the lower platform and keep the people back until the passengers got off; two men were riding the cars, one at each end; didn't notice Mrs. Dixon until saw her step off the platform; was looking towards her when it happened; someone hollowed "here comes a car" and several people looked around the corner to see if there was a car coming, and witness looked himself, and saw some people walking up over the platform and this lady stepped off the platform into the middle of the track; there were about 20 or 30 people around the platform at the time scattered around there in different places; there were some benches sitting back of the enclosed part with some people sitting back there; there were no more than 6 or 7 people on the platform at the time, on the west end of the platform; was standing about 8 or 10 steps from Mrs. Dixon at the time she stepped off the platform; there was good light there—pretty nearly as light as daylight—enough to read a newspaper, underneath the station; could see all the way across the tracks down to the merry-go-round; the arc light over the steps was lighted; the steam train was on the siding back in the station to the east of the platform, with two cars attached; thinks it had been there a little while at the time of the accident; there were about three
77 benches in between the covered shed and the platform; saw some ladies step across the track, but could not identify them; marks on plat where Mrs. Dixon stepped off; there was no disorder there at all; had not been any disorder the whole afternoon; there was no extraordinarily large crowd there that day; they were orderly.

On cross-examination witness testified that he did not know how many people would constitute an extraordinarily large crowd for the entire day; there were only 7 or 8 people on the platform at the time, scattered about at different places, kind of paired off in couples, men and women; heard a cry then looked around and seen people passing from the benches towards the platform; some of them were just leaving the benches, and some of them were on the platform; about that time this lady stepped off the platform, I judge, seeing a platform on the other side and thought probably she would go over there and take the car she would get a better seat or something; there was a platform on the other side of the track, 4½ feet wide and about 8 inches high from the ground; it was longer than the length of a car, which was about 44 feet long; there were some people went across there; saw the lady that fell walk from the benches—from towards the benches—when first observed Mrs.

Dixon mounting the platform; doesn't know that he particularly kept his eyes right on her, but she walked upon the platform and stepped over on to the track; there were some people with her; doesn't think anybody with her stepped off but her; when Mrs. Dixon walked up on the platform could see her; saw her hesitate maybe 4 or 5 seconds, maybe 10 seconds, maybe a little longer; thinks there were at least 20 benches there; judges one-third of them were filled with people just before the accident; there were 2 arc lights lit that night.

Q. That nearest arc light do you recollect the shadow that it threw along the front of that station platform? A. I do not recollect any dark shadow. I know the lights threw a good light all around there; recollect a light shadow.

78 Q. Where was that light shadow thrown? You know when a shadow is cast it is thrown on the ground. Now where on the ground was that light shadow cast with respect to this station platform? A. The light would shadow all around the west end of the platform. All around where this lady stepped off, taking in the steps and below the steps.

No people standing around Mrs. Dixon to offer any impediment to seeing what she was doing; the other car had gone out 5 or 8 minutes before Mrs. Dixon had fallen; the last car that went away cleaned up the platform and the station; comfortably on there they seemed to be; that is about all.

Q. Did you say at the last trial of this case, Mr. Trammall, that there were about 110 people that you packed in this car? A. You may pack 110 in there if you wanted to.

Q. Didn't you say that you did pack that many in there? A. I never knowed them to my knowing. I judged that you could pack 110 in there if you were a mind to do it.

Q. How many people could you pack on that platform of the station? A. About 60 people.

Q. You were instructed, Mr. Trammall, not to permit that station platform to become over-crowded, were you not?

Mr. LAMBERT: I object to any question as to what instructions he had; it has nothing to do with this case; we are dealing with facts here and are not going into the realm of speculation.

The COURT: The objection is sustained.

To which ruling of the court exception was taken, which exception was duly entered by the court upon its minutes.

79 Thereupon, to further maintain the issues on its part joined, defendant offered ANDREW C. JACKSON, who testified that he was in the employ of the defendant and has been since July 4, 1906, as a special officer; was at the East end of the station talking to three ladies, who were asking questions; indicates on plat where standing; was standing on the cinders at the east end of the enclosed part; had been talking to these ladies about 10 minutes; had the duty to perform of keeping the people back when the cars were approaching; rode in on the cars, which were brought in at a very slow speed with one officer on the front and one on

the rear of each car; these officers would keep people from being too close to the cars, or getting on the cars before they stopped, and to stop any pushing or whatever you call it; didn't see anything of the accident; there had been no indications of disorder of any kind there that afternoon; nice quiet set of people; the light was bright; and all right; could see almost anywhere.

On cross-examination witness testified that he was always on the lookout for rushes of the people; heard the cry go up that the car was coming; looked up and saw probably 50 people—there may have been more and there may have been less—came to the edge of the platform to see if the car was coming; the last car had been gone probably 15 or 20 minutes; had not seen the platform and cars crowded to any extent before that same evening; have seen people rushing to try and get on the cars before and since, but did not on this occasion.

Q. Didn't you testify at the last trial that after you had seen the surging forward of the people you paid no attention to it whatever? A. Not that I know of; I tried to keep the people back as best I could.

Q. I don't mean so much, Mr. Jackson, as to what you did after the accident had happened but when the cry went up and
80 you saw these people surging to the front of the platform.

You testified at the last trial that you paid no more attention to it. Is that your present recollection of it, or is your recollection now otherwise than that? A. I couldn't possibly say. I was there for that duty.

Q. What duty was that? A. To see to the passengers that they were cared for.

Q. Were you or not under instructions to prevent the crowding of that station platform.

Question objected to; Objection sustained.

Exception taken and duly noted by the court upon its minutes.

Redirect examination:

Q. Mr. Jackson, did you ever know of anybody ever being hurt there before?

Question objected to as improper redirect examination, and as being incompetent, immaterial and irrelevant.

The COURT: If anybody had been hurt there before on similar accidents it would give notice to the company about it. You asked about the crowding there. I think the question would be competent.

Mr. LAMBERT: It was asked before and admitted on redirect examination and the Court of Appeals must have approved it.

The COURT: I think it is proper redirect examination. He may answer the question.

To which ruling of the court an exception was taken and duly noted by the court upon its minutes.

Witness testified further that the steam train was up there on the siding at the time, composed of an engine and two coaches;

those steam trains were brought there and put on the siding to bring down the people that seemed to want to go at one time; it seemed as if the best crowd of people would want to come down after they saw this search light or probably had danced a while, or heard the music; the steam train was there to relieve any unnecessary crowd; yes, sir, unusual; does not remember whether the steam train had made a trip or not before that day; the company had three steam trains, but whether they were using the three steam trains or not he doesn't remember; doesn't think the steam train had been on the siding over an hour; thinks they used the steam trains as express trains which went through to Washington without stopping at the intermediate stations; left grounds at about 11:00 o'clock that night.

Thereupon to further maintain the issues on its part joined, defendant re-called WILLIAM M. ARMSTRONG, who testified that he was foreman at the Falls, in August of 1907; that he was
81 down on the grounds when the accident happened to Mrs. Dixon; that he had 8 men under him; that he came to the station possibly 10 or 12 minutes after the accident and saw Mrs. Dixon on a bench in the shed; indicates on plat where she was sitting; had 4 of his men at the station, and three with him; Mr. Philipps, who was an inspector and Police Officer, was not under witness; when witness left the station 10 minutes before the accident there were probably 50 people around there under the station, and a few on the platform; they were not crowding any; the cars were running 12 or 15 minutes apart; a steam train was on the siding east of the station; it had been there about an hour—from half an hour to an hour; it was to relieve any congested condition of traffic; there had been no congestion of traffic up to that time because we had this train on the siding to relieve that situation if it should arise; that was the steam train that Mrs. Dixon was taken down in; the lights were good; there was sufficient light to see anything around; we had an arc light about 100 feet from the station; we could see up that far; we could see down the path into the grounds; doesn't know just how far; we had an arc light about 20 feet in front of the station and we had incandescent lights under the shed at the station; in the enclosed part also; the refreshment stand, which was lighted by incandescent lights was about 6 feet from this corner (indicating on plat); the incandescent lights were 16-candle power and the arc lights each 200 candle power.

On cross-examination witness testified that it was the duty of one of the guards to be there in case of a crowd; that that was entirely governed by the crowd; by the number of people we had there; there were about 500 people as near as he could determine at the grounds that day; we have used no method to keep the crowd from pushing on the cars rapidly; did not use any rope or any division across the platform or anything; kept them back by warning them; that that generally restrains a crowd and keeps the people back; there were enough people on the platform at the time to require guards on the platform; they were there for that purpose; hard for him to tell how much of a crowd was there at the time; there is

82 one thing about Great Falls park, you can put thousands of people there and you can't count one-hundred of them in any one position, generally; the illumination of the Falls in the summer starts anywhere from 8 to 8:30; saw Mrs. Dixon between 8:30 and 9:00 o'clock; when he saw her there were not many, if any, people on the platform; there were possibly 500 or 600 in the grounds; there were perhaps 20 benches under the shed, but none between the covered part and the platform; the crowd starts away earlier on Sunday than they do on any other day; the park is generally cleared at 10:30 or 11:00; if there is pushing or shoving the guards depend altogether on how rough the pushing and shoving is; of course if it becomes very rough of course we stop it; any slight pushing or shoving we would not like to stop or take a hand in stopping, or insulting anybody; that would be detrimental to our business to do anything like that; only where the pushing and shoving becomes extreme—where there is any violent pushing or shoving; of course when it looks like it might be a dangerous proposition, anybody would get hurt, of course we would quell anything of that sort if we saw it; if witness was right there on the spot and saw a crowd trying to get on the car, pushing about and shoving each other and it looked as if it was getting to be a dangerous proposition, that it looked as if somebody might get hurt by this shoving and pushing, of course we would stop it.

On redirect examination witness testified that there were no seats in between the closed part and the step or platform; the platform was about 14 inches from the ground and the lower step of the car is 19 inches and protruded over the edge of the platform 4 or 5 inches, when the car was brought in; witness measured the platform and found it was 10 inches above the top of the rail.

Q. Had you ever had any trouble or accident of any kind at this place prior to this occasion? A. No sir.

To which question and answer plaintiffs' counsel objected, and after their objection had been overruled had the court note upon its minutes an exception thereto.

83 On recross-examination witness testified that he made all the measurements a short time prior to the first trial and about the same time Mr. Mackall made them; that he had not made any other measurements there; thinks the loop was finished although not using it at the time of the Dixon accident; that the lights appearing on the plat (indicating) are just under the eaves a little back from the front of the eaves, inside the plate; on cross pieces running from the enclosed part over to this plate; thinks the lights were in line midway of the platform; is not sure about it; they were 7 or 8 feet above the platform; doesn't think the roof extended out over the platform.

On re-redirect examination witness further testified that the lights were right on the plate.

Q. Was there anything there to throw any shadow on that platform? Did the lights shine brightly right down on the platform?

A. Yes, sir.

WITNESS: The lights are about 4 inches in length, and the socket

is about 1½ inches long; the reason we were not using the loop was because there had to be some alterations in the cars before we could use them on account of a change over at the pit on this end at Roslyn; the track extended to the end of the covered shed before the loop was put in; that when the loop was put in no change at all had to be made with reference to the tracks or the construction here at this western edge of the platform, as that was entirely and completely finished at the time.

Thereupon to further maintain the issues on its part joined defendant produced as a witness JOHN D. CONNOR, who testified that he was Superintendent of the Capital Traction Company at their Navy Yard car-barn; that in 1907 he was working for the same company as a conductor; was at Great Falls August 25th, 1907; left Georgetown 5:30 P. M. with wife and child; was standing on the platform 10 or 12 feet from Mrs. Dixon at the time she was hurt; there were three or four, possibly five people stepped across the track from the platform; just at that time heard someone holler and saw the lady fall down on the track; "how she came to fall I do not know;" "I was under the impression that she started to step down from the platform;" saw the people step down from the platform right in front of her; doesn't know whether she started to step off; supposes so; it looked that way; it was lighted well enough around there to see the rail and the ties from the platform; you could see the edge of the platform; didn't see any shadows around there; could see the ground on the other side of the track; should say there were about 75 possibly 100 people on the platform; no pushing or shoving where he was; was about 8 or 10 feet east of Mrs. Dixon, standing right on the edge of the platform; saw the headlight of a car coming around just at that time; one car had left just as witness reached platform; there was no trouble seeing where the car came up; didn't see any signs of disorder or unruly conduct; didn't hear any improper language or anything of that sort; had been on the platform between 5 and 10 minutes possibly when the accident happened; would describe the people as orderly; doesn't know about Mrs. Dixon stepping; she seemed to fall kind of towards the Falls—towards the west and to her left; witness had no trouble standing there and keeping his position al-right; child was about 13 years of age, standing there with his wife; paid fares that day for his party of three; not connected with the Great Falls road in anyway; when first went to the platform doesn't think there were more than a dozen people there; a half dozen possibly.

On cross-examination witness testified that he had witnessed the illumination of the Falls; doesn't recollect any signs of an approaching storm; used to sizing up and estimating crowds; from 75 to 100 people present on the platform at the time; doesn't think there were more than 4 or 5 people over on the ground on the other side of the track; did not hear any cry go up that a car was coming; just saw the headlight of the car coming around the curve; while looking at headlight heard scream and just glanced in that direction; saw Mrs.

Dixon lying across the track; didn't have to turn to see her; she was 10 or 12 feet from him; points out on plat where he was standing.

On redirect examination witness testified that the tracks had a stub end at the west end of the platform; that the step on the
85 car did not extend over the top of the platform; it was away from the platform,—a little, to the best of witness's recollection; child and wife standing between witness and Mrs. Dixon; recalls taking a short step up from the platform to the first step of the car.

Thereupon to further maintain the issues on its part joined, the defendant called W. E. PHILIPPS, who testified that he has been in the employ of the defendant since February 1906; that he was inside the closed part of the building at the time of the accident; that he had been in there about five minutes; that the lights in and around the station there were good; you could see to read a newspaper by them; thinks there were about 40 or 50 people around there inside the building when he went in the station; steam train had been there about a half hour on the side track waiting for a crowd to go back to Roslyn; there had been no occasion to use it up to that time as the regular electric service had been sufficient; no disorder occurred to his knowledge the whole evening; everything was orderly and good-natured; was a car inspector at the time; the step of the car lapped the platform a little; the lower step of the car was about 5 or 6 inches above the platform and you would step from the platform up to the lower step of the car; the electric lights were all lit that evening.

On cross-examination witness testified that he inspected the cars when they came to the station; that he had inspected a car five or six minutes before the accident; doesn't remember whether it was well filled with people or not; couldn't say that it was one of the biggest days they had had there; would say 2700 or 2800 people was just an ordinary crowd; had not seen any congestion before; the cars had been handling the crowd very easily; the platform is the only place the people can take the cars from and when the cars come in always the people who are under the shed go to the platform and of course they get close to the car and they can get a goodly
86 number on there; has often seen the platform full of people standing there ready to get on the cars; doesn't know how many there were; hadn't a platform over on the other side of the track then.

On redirect examination the following question was asked:

Q. Had you ever had an accident there before this time? A. Not to my knowledge.

To which question and answer objection having been made and overruled, exception was then and there taken and duly noted by the Court upon its minutes.

Thereupon to further maintain the issues on its part joined the defendant offered FRANK S. FOWLER, who testified that he had a refreshment stand at Great Falls and had had it there about 7 years; that he buys the privilege from the company; that on the night of August 25, 1907 he was standing behind his counter and taking a look generally at the people walking around, coming up the steps, etc., and saw a party come up the steps, believed to be three ladies, and two or three gentlemen together; one was a large lady; they came up the steps, walked across partly towards his counter, turned to the left and went up on the platform as if walking up there to take a position for the car; they stopped there in a group and the big lady appeared to him as if she wanted to change her position on the platform and she made kind of a turn and as she turned she reeled out toward the railroad track and fell off the platform; that when he got to the lady she was sitting on the platform with her feet down on the rails; witness was standing right behind his counter facing towards the railroad track; doesn't recall seeing two ladies step off the platform and go across the track, although they might have done so; as near as can recollect they were all standing together when Mrs. Dixon started to change her position; at that time there might have been 150 people around there taking in everything, from inside of the station and the outside to the platform, all around could see 25 feet of it;—there might have been 15

87 to 20 people in all along the platform there; the lights were bright there that evening as usual; just the same as they were at all times; had no trouble in seeing across the platform and over across the track; light enough for witness to read a newspaper; the people were very orderly and good-natured; had not seen any evidence of any trouble or difficulty; did not notice anything prior to the accident that would have attracted anybody's attention by the way people were conducting themselves.

Q. Had you ever had any accident there at that station prior to this time? A. No, sir.

To which question and answer objection being made and overruled, exception was taken and duly noted by the court upon its minutes.

On cross-examination witness said there was nothing in particular that attracted his attention to Mrs. Dixon and the group of ladies before the accident; this little group had been standing on the platform not more than a couple of minutes—two or three minutes,—observed them come up the steps; Mrs. Dixon was standing about as near the center of the platform as could be.

Q. Was it from the center of the platform that she had toppled over on the tracks? A. She stepped like standing in that position, (indicating.) She stepped as if she were going to change her position in that way and like I would miss that (indicating) and reeled off.

The edge of her dress was about 18 or 20 inches from the edge of the platform and witness was standing about 18 feet away.

Q. Do you recollect testifying at the first trial that there were

from 150 to 200 people present on that station platform at the time this accident happened? A. I did not testify to anything of the kind. What I did say, and I asked you the question if I remember aright, at the time, whether you wanted to know on the platform or in the station on the platform and around everywhere there.

That is what I testified to.

88 The present recollection of the witness is that there were from 150 to 200 people in and around the station, around in through the loop, and around in through the station, through the vacant space there; couldn't see the loop; couldn't see all the platform; could see about 60 people sitting on the left of the witness right under the shed; 60 or possibly more; there were from 15 to 20 benches there; the benches would seat four people; they were about all filled at the time; in the portion of the platform witness could see and under the shed there were about 80 people present.

Q. At the last trial, Mr. Fowler, you were asked this question:

"Q. What attracted your attention to these particular people?"

A. Whenever we saw anybody do that it attracts our attentions.

Q. Do what? A. Why we know then they are chasing for a car."

Did you say that? A. More than likely I said so; I knew by their walking up on the platform that they were going there to take a position for a car, trying to get the first car. They wouldn't go up on the platform without.

The track stopped, going west, right at the end of the platform. Right there there were two stubbing posts; right there on the track.

On re-direct examination witness was asked the following question:

Q. How far did the tracks extend past that snubbing post? A. They were at that time finishing the loop around.

Q. You can't tell how far the tracks extended west of that snubbing post before they struck the loop? A. They were all connected up at that time.

89 Q. Everything was finished up there, was it? A. Yes, sir. If there was any part of the loop that was not finished it was back there. (Indicating.)

Q. Was the ground all finished here opposite the platform solid? A. In between the tracks everything was full up to the ties, sir.

Thereupon to further maintain the issues on its part joined the defendant called Dr. JAMES T. PRENDERGAST, who testified that he was a Dental Surgeon and was at Great Falls on the night of August 25th, 1907; was sitting in the rear corner of the shed at the top in the corner; the corner furthest away from Washington; had his wife and son with him; had been sitting on chairs there, he thinks about 15 minutes, with his back towards the platform; someone hollered "there is a woman hurt"; went over to where she was on the track; during the time sitting in the chairs there was a fluctuating crowd of from 50 to 150 in and around the station; saw what misery she was in and gave her one-sixth of a grain of morphine, and then

followed that up with one-sixtieth of a grain of strychnine; she was asked right away if anyone pushed or shoved her, and she said no, she had made a misstep and she had misjudged her distance; we got away from there within 20 minutes or a half hour after the accident and came as far as the Aqueduct Bridge with her; had no trouble in seeing and would not consider it dark around there; could see over to the platform, and saw around there; when witness went over to the track where Mrs. Dixon was could see her head was lying on the track; could see from there plainly on the track where she was; the people there were orderly and didn't see any disorder of any kind; didn't hear any improper language; didn't see any pushing or shoving; Mrs. Dixon was conscious; she was more or less hysterical; she seemed to know what she was talking about.

90 On cross-examination witness said that Mrs. Dixon was not hysterical when he first went up to her on the track; after she was carried to the bench and found her ankle was hurt that is when she first showed signs of hysteria; she was apparently suffering terrible agony, and witness gave her the morphine to quiet her and gave her the strychnine to strengthen her heart; going down in the car with her the expressions of pain from Mrs. Dixon were very extreme; thinks there were about a dozen people sitting under the shed; turned his head several times and saw this crowd of 50 to 150 people as he then observed them on the platform; thinks he was in the shed about 15 or 20 minutes and one or two cars had gone out; made no attempt to get any of the earlier cars that evening.

Q. Did you watch to see whether there was any crowding on the platform or the cars when these cars came in? A. Not particularly.

Q. And you did not particularly see any pushing or shoving there, did you? A. No, sir.

At the time Mrs. Dixon made the statement she was apparently suffering very much from her hurts.

Redirect examination:

Q. Doctor, speaking of the number of people who were up there you said from 50 to 150 people. Did you mean all around the station? A. Yes sir.

Q. You didn't mean to confine that to the platform then? A. No, I mean in and about the station.

Recross-examination:

Q. When you say "in and about," how close to the station do you mean it was? A. I mean the grounds that the station and the station surroundings would cover the tracks included.

91 Thereupon Doctors W. M. BARTON and HENRY D. FRYE were called as witnesses for the defendant, and testified, the one that Mrs. Dixon had "hystero neurosis", from which she would recover as soon as the litigation terminated; the other that the left ankle was seriously injured and permanently unless relief can be obtained by re-section of the joint.

92 Whereupon, and further to maintain the issues on its part joined, the defendant offered the testimony of J. A. PRESCOTT taken at a former trial, he being without *th* the jurisdiction of the court:

That he was 72 years of age; that he was at the Falls on the Sunday Mrs. Dixon was hurt; that he remained there until the single car went back with Mrs. Dixon about eight o'clock; that it was a very pleasant day, but towards evening the storm was accentuated by the electric lights; it was more densely dark at that time on account of the lights; witness and wife were attempting to get on a train which left Great Falls at about half-past seven, but the car was very crowded and they were obliged to remain, and they simply loitered around the place; his wife sat in a settee on the platform, and witness went across the track; there was no obscurity between the platform and himself; at the particular time of the accident was looking towards the platform where the people were, and there were some walking around; "at one point as I looked I saw a lady fall; I saw her and it was caused by probably the density of the people afterward, after her fall I saw probably about from her knees to her head"; after the accident the time of the witness was occupied in trying to find a train, and he had hard work in doing it. No car came until somewhere about a quarter of eight, and it was simply one car, and the injured lady was put in that car with her daughter; that Mr. Franklin and witness' wife were also in car; witness sat next to Mr. Franklin, and it was due to his courtesy that they were allowed to ride back to town in that car; witness didn't see the slightest disorder from the time he arrived there in the morning until evening; there was no carousing and it really was not a big crowd; there was no hustle, and the crowd was a good-natured one; the platform stood some 10 or 12 inches above the rails; remembers the arc lights; could see the lady 20 feet away as she lay prone on the ground just as well as he could see her in the Court room; witness locates the benches on the platform (pointing out just where on the plat) although remembers benches on the cinder walk with which he had nothing to do; afterwards said that there was one bench on the cinder walk between the platform and the covered station on which his wife reclined.

On cross-examination witness stated that the night was so dark that without the arc lights a person could not have seen another unless almost up to them; no cars came in between the one so crowded at about half-past seven, which they could not get on, and the one Mrs. Dixon was taken away in; that there was not a particularly large crowd present on the platform at any time; witness traversed the platform from one end to the other, several times, and had no trouble in getting along, hardly rubbing up against

93 people; there were a good many people there; not an extra large crowd, but there were a good many there, although scattered; if they had been on the platform, there might easily have been a crowd; the platform was narrow and he stepped down looking particularly where he would step and the ground sloped towards the Falls; when witness went to the Station, his

purpose was to get a car, and was watching for another over on the opposite side of the platform; there were not so many other people on the side with him; recollects testifying at the first trial that he had some difficulty in getting a car, so stood on the other side of the track to have a better chance, as he could more easily and safely get a car from the other side; may have stated at the first trial that at a certain particular time the platform was crowded; because the people about the time he went up there may have filled the platform, but as a general thing there was no crowd there; saw no guards around there, there was no need for them; people were anxious to get aboard the car that filled up just as witness, himself, was, and all were endeavoring to get in the two entrances, fore and aft; the people were all converging to these two points and a good many were disappointed; witness remembers everything, and doesn't forget anything.

By Mr. LAMBERT: As you stepped down off that platform on to the track, did you have any difficulty in seeing where you were stepping? A. Not an atom; there was perfect daylight.

Q. Was there any shadow there that prevented you from seeing the rail or the ground that you were stepping on? A. There was not.

By Mr. MATHER:

Q. I understood you to say a moment ago that you could not tell? A. I said I could not tell; I didn't remember. Now I say for myself I went there and was perfectly sure before I took the step that it was perfectly safe. Witness stepped down over the track in between the rail and the platform.

Whereupon, and further to maintain the issues on its part joined, the defendant offered the testimony of Mrs. GEORGIA W. PRESCOTT, taken at a former trial, she being without the jurisdiction of the court:

That she was the wife of John A. Prescott; that she started to return to Washington about 8 o'clock and tried to get on a car that came in, and it filled so rapidly that she went back and did not attempt to get on; went back to the end of the platform nearest the Falls, and sat down on a settee that faced the City; the condition of the lights was good; had no difficulty in seeing around; was
94 in a position to observe the platform when sitting there; the platform was very clear; the car had taken down the greater part of the crowd and it was comparatively clear; if the platform had not been clear, witness could not have seen Mrs. Dixon when she was laid in front of her; most of the crowd were away down at the further end and did not seem to congregate up at this end any more; could see her husband; there was plenty of light and could see the whole length of the platform; the people were perfectly orderly; heard no noise, or confusion, or disturbance of any kind.

On cross-examination witness said she was sitting in the rear part of the covered shed, away back at the end; had come to the station for the purpose of getting on a car to go back home, and

wanted to go as quickly as possible, but the car, of course filled, and witness would never rush—would rather wait, a while, when trying to board the car, people were all around, as they always are; no car came in between the one witness tried to board and get in, and the one she went back to town in; during the time witness was waiting for a car, had not been observing the platform; had not been looking at platform at all; didn't see Mrs. Dixon fall, and didn't know anything about it until heard the crowd say that this lady had fallen, or stepped off the platform; expects that on the car that filled up the people were converging towards the two entrances "because you know, they often climb into the windows when they can't get in in any other way but I did not see anything that was boisterous or noisy, or any loud talking, or any trouble of any kind."

On re-direct examination witness thinks there is one step and then the platform, and she walked directly to the car; the car filled so rapidly it was impossible for her to get on; everyone, generally, wants to be served first, you know; they rush in, and I am not one of the rushing kind.

95 Thereupon, to further maintain the issues on its part joined, the defendant offered the testimony of THEODORE J. KING, Deceased, taken by the company at the first trial, as follows:

That he was at Great Falls on the night when the plaintiff was injured; in response to a question to indicate on the plat just where the electric lights were that night, and the candle power of the lights, witness testified that there is a 1200 c. p. arc light with a clear globe (indicating) in the station underneath the outside of the closed part, at the corner of the closed part; there were six 16 c. p. incandescent lights; there were six in the enclosed part (indicating); there were twelve out underneath the waiting shed, of 16 c. p. At a distance of about 20 or 24 ft. from the end of the platform was another arc light (indicating) with a clear globe, and at a distance of about 75 ft. along here (indicating) is another arc light. All of these lights gave light to the station; the pole on which those lights were fixed is on the ceiling in the shed; the arc light of 1200 c. p. was 21 ft. away diagonally from this western end of the platform (indicating); from the eastern end of the station platform the 1200 c. p. arc light to the east is away perhaps 150 ft.—it may be only 125 ft.; the roof of the shed extends over the edge of the platform about 15"; that is where the lights are that hung from the projecting roof; the roof may be 7' 6" or 8' high from the floor of the platform; the height varies a little. This light here is from 6 to 9 inches lower than the light here (indicating) on account of the roof being level, whereas the platform slants downward with the grade of the rails; the 1200 c. p. light will throw a good light 300'; there were six underneath this roof and eight spread around the open part (indicating); the platform was 3' 10" wide; he

96 measured it; that was exclusive of the step which is 10 or 12 inch board; that platform is 12 in. above the ground; he measured it; on the night of the accident, the platform was lit to

its full brilliance, and all the lights he mentioned were there; the plat that he is examined about represents the general lay out and the conditions as they existed August 25th, 1907; there has been no change whatever in either platform, lights or building that is not shown on that plat; after he was notified of the accident, and he reached the place, he saw a number of people around at this point, and found around the plaintiff, who was moaning, a little ring of people, and there may have been in the other parts of the building at that time perhaps 75 or 80 people, all told; his records show that he hauled 2700 people up there that day, which covered a period from the first car in the morning to the last car at night, the first car leaving at 5 A. M., and the last car leaving Washington at perhaps 12 o'clock that night; he did not think at any time there were more than 1500 people present at the Falls; they would commence going early in the morning; they got a great many fishermen on the early cars, and their maximum traffic to the Falls is at three o'clock Sunday afternoon; as a rule the majority of people would return about eleven or possibly one o'clock; when he went there that night, about eight o'clock, there was no unusual crowd; they have at that station when there are only two or three hundred people all together on the grounds, just as many as were there that night; the people assemble there, and it is impossible to tell at just what moment a bunch of people will come to the station to go into the city; there are a great many little societies that go out there, and we do not know about them, and all the people in such a little party will return at the same time at an hour known to themselves but not to the railroad company; at such a time there may be 40 or 50 who will come to the station inside of a few minutes; an extraordinary event will cause a rush; there was no ex-

97 extraordinary event on this occasion that he noticed. He has been in the railroad business since 1822, serving with the Washington & Georgetown Railway Co., the Metropolitan Railroad Company, the Silver Spring Co., the Columbia Railroad Company, and the Great Falls Railroad Company; he has been general superintendent of the Great Falls Company for nearly four years; during the time he has been engaged in railroad work as an official of the railroad companies, he has had opportunities to, and has, observed stations and platforms on the different electric and steam lines, and knows of no instance where a platform has been protected or fixed with a guard rail between the steps where the people meet on the platform and where the cars come in and stop.

Q. Did you ever know of a turnstile being used in that connection? A. To allow passengers to get on cars?

Q. Yes. A. The only thing I ever saw in the way of a turnstile would be at a station where they collected the fares as the people went into the station. This was put there simply to get their money, in which event the passengers went in, and the platforms adjoining the trains would be the same as our platforms, or all other platforms he has seen; he has never seen a railing of any kind between the platforms and the cars along where the people stepped on the cars; it would be impossible to have it for the

reason that the cars coming in and passing out, platforms are made long so that they can unload perhaps two or three cars or load them at the same time, and if they were put right along there, they could only do one thing, which would have to be prearranged and they would have to do that on any and all occasions; the lowest step of the car is 14" from the ground; when a car is in position for loading, the step overlaps the platform, perhaps one inch. In response to a question as to what safeguards and devices witness had adopted at Great Falls in reference to caring for the crowd, 98 for the passengers, and loading and unloading cars, witness replied that "the protection of the public and the avoidance of accident is the most important duty that a railroad manager has. That comes first of all the duties he has—to provide the safest possible means." Has been in the business since 1822, with the exception of three years, and he has seen all kinds of appliances arranged for the safety of the public; that when he took charge of the road, he went there as an experienced railroad manager; the question arose when he took charge of the trains running into Great Falls station as to what had best be done for the protection of the public; it was for him to devise what he regarded as the safest and best *place* to protect their passengers; he first had a man stationed in front of the platform so as to warn back the people when the incoming cars came in; he never saw crowds enough there so that they appeared to be in any danger of falling off that platform except the only danger that was to be expected was the danger of passengers standing too close to the cars when they came in so that their shoulders or something would be struck by incoming cars, and that they might be knocked down and other people injured, perhaps; he thought of yards and gates and various things, of that kind, but abandoned them when the process and danger was considered; he first had a man stationed in front of the platform to warn people back when the car approached; he found that was not the safest plan; found quite a number of people were being jarred by somebody on the platform who would perhaps grab hold of the handle of the car when it came in and then swing out and strike somebody some distance away; it was a safe place, but a passenger would perhaps grab hold of the car when it came in and swing out, his only object apparently being to get on the car himself; people resented the company's men telling them to get back and trying to regulate them as to where — should stand, and a great many people went away from the Falls exasperated because 99 they felt the men were taking advantage of the authority they had; when it was he advised the plan of having men on the front steps standing on the lower step, and also a man on the rear step, and with the car entering under perfect control, so that if anybody fell off or stepped off the platform in front of the car, with the air brakes, it could be stopped immediately; under these conditions the crowd is moved back and nobody has ever been jostled off of their feet since that plan has been adopted; gates were a great deal of trouble, as in the first place there would be the same rush for the gate as there is for the car; it would simply put it one

step farther off; as to the number of people who went inside the gates, that would be a matter of everlasting controversy and hard feeling among the people that it is our business to accommodate and please. For instance, the cars seat 44 people; but it is a well known fact that on every closed car there — a certain number of people who will stand, even if there are vacant seats inside the car; for that reason, it would be impossible to decide as to how many people we should allow to go into an enclosure after we opened the gate, if we did have a gate. And then, when the gate is closed, there may come along some gentleman who has to make a train, or who has heard that there is trouble at his home, or there is some special reason why he should be let on board—and it is wonderful how many people have important business when occasions of that kind occur—and so it would be very hard to decide just when to close the gate, when not to let anybody else in; and it would inevitably result in complaints. But this plan, after considering the others fully, everything he has ever seen in connection with handling passengers on railroads, and witness had travelled extensively—after considering every plan that he had seen, could think of, or know anything about, this plan was adopted as the best, the safest and the only plan. The platform is sufficient in size if they had 5,000 people at the Falls every day; it would not cut any figure as to the jostling or pushing on the outer edge. The

majority of the people who get on the cars stand on the
100 ground, and when the cars enter, they follow the people who are in the immediate vicinity on that platform; the cars as they come in stop at various places; 72 people can stand on that platform, allowing each one 4 sq. ft. of surface; if he is in a jam the ordinary man occupies a space of about 18 inches one way, and less than one foot the other way; on the basis of 2 sq. ft., 144 people could stand on that platform with comfort; on the basis of 2 sq. ft. to a man the platform would not be packed, but it would be uncomfortably close for a long period of time, that is, for a period of from 15 to 20 minutes, although in that event the crowd would be spread over more ground; in August, 1907, there were five men at the station and platform; he issues orders to Mr. Phillips and Mr. Armstrong; on this day he observed two of the men riding the cars attending to their duties; Mr. Phillips was looking after his duties also; then men were in position to look after whatever was necessary; no positive instructions were given about people going up on the platform; you would insult any person if you would tell him that he had to get off of that platform; and such a person would probably be sore against the resort, feeling that he had not been properly treated; the schedule that day varied from 8 to 15 or 16 or 20 minutes, according to the movements of the people; the lights were discontinued at 10:30 o'clock; they started at dusk; the attendant who attended to the search light was on the grounds, and as soon as the light would be at all effective on the water, he would turn it on; between 4 and 8:30 o'clock they had sufficient trains to run continuously on a schedule of 10 minutes; in the evening after six o'clock, very few people went westward, and as soon as

that time occurs, they would hold cars that came into the Falls until they got a load; then they might perhaps send several cars or trains close together; on that day they were running three steam trains; at the time of the accident a steam train was being held in reserve on the siding, waiting to get a crowd to take to Washington.

101 There had not been sufficient people waiting trains up to that time to justify running it; the electrics were found to be adequate to bring the people there and take them back; the steam train remained in there waiting for orders, or waiting until such time as a crowd might appear, a sufficient crowd to demand its use; when he says a crowd, he means 30 or 40 people; a steam train will seat 88 people; the steam cars have the same seating capacity as the electric cars; the platform and step arrangement at Great Falls compare favorable with other platforms along their own line and other lines of railroad that he has had experience with. It is much larger than some others, and where the number of people carried compares with the number they carry, this platform is just as large; of course, there are some platforms that are larger than that. If the cars stopped at a place where all the passengers had to be accommodated on the platform, of course it would require a larger platform. On other roads and resorts you will find in nearly every place, a different condition. There is a different construction of the equipment. Our equipment is the latest in the line of electric equipment, and the cars are higher. Our cars are perhaps a foot or more higher than some other cars that are in use; the length of line from Rosslyn to Great Falls is approximately 14 miles, and it is double tracked all the way, except at the bridge where it comes off into a single track, and at the Falls it goes into a single track where it leads into the loop.

On cross-examination, witness testified that the lights ran about what is known as the plate of the building; that the eaves project over above that; the lights might perhaps be a foot from the edge of the eaves and about on a level with the bottom; the roof extends over, perhaps a foot, maybe 15 inches, but the slant of the roof is such as to make it about a level,—that is, the bottom of the lamp would be on an exact level with the lowest portion of the eaves; the eaves in no manner throw a shadow on the ground; from no point would you get a shadow from the projecting of those
102 eaves as against these lamps, unless you got up in the air; there is absolutely nothing to prevent the volume of light from projecting within the 7 foot of space on the shed side of the station, and in every way, excepting the side of the station, which would act as a reflector throwing a stronger light over the platform; says it is not a fact that the volume of light there, instead of being diffused about generally, is thrown down on that 7 foot space of ground between the shed and platform; that where a light is in the open, you can't confine it to some one direction, the rays project evenly out in every direction unless there is an obstruction; 7 feet distant from the front of the shed is the station platform, which is a foot from the ground, and a solid structure so far as the diffusion of any light through it is concerned; says there is a cross light there

that breaks up the blinding effect of the arc lights; that the lights cast shadows in proportion to the amount of light they give and the darkness of the night; that the reason for the platform was on account of the cars being a foot higher than the other cars; that it was not a step, but a platform,—a large commodious platform—that he had exercised the greatest care, so far as his experience dictated, in providing as safe a platform for their patrons out there as he could, and it was the subject of a considerable thought on his part; that those passengers who had entrusted themselves to his care he wanted to provide for their safety as far as it was possible to go, and that led to the adoption of this particular platform; it was oftentimes the case that parties of 40 or 50 people would go together and come back to the platform in a party, and that is one of the things he took into consideration when having the platform made; that is the wrong inference of counsel, that these parties would come back to the platform and take cars back home; 40 or 50 people would come to the place and would perhaps all sit down, if there was no car there it was only a small proportion of the people that rushed to the platform or stood there and waited

103 15 or 20 minutes; that is an unusual thing; that was the only place the cars could be taken from, but there were comfortable seats and rooms provided there for them to accommodate themselves between cars; when people wanted to take the cars they could not take them from where these seats were provided; they could go up after the car entered the station; that it was not necessary that they rush out on to the platform when the car came in; has never seen a rush; have had crowds there at many times; have seen the platform covered with people many times, "but the rush you speak of and the provision of this platform, I think you have an erroneous idea about that"; the platform was not provided and could not be provided to accommodate the people who would go to the Falls in the course of a day; the building itself would not accommodate them; they could not get in that building (speaking of the depot); there is no place about the depot that people could stop in except the covered shed; people don't travel all in a bunch; they are divided up; we could not carry any 2700 people away from the place after 8:30,—that is, it would take us perhaps four or five hours; there never was a crowd at the Falls after 8 o'clock of over 500, never since we have had the place, and there were not over 500 people up at Great Falls on the night of August 25 after 8 o'clock.

Q. Did you not say along about 8 o'clock there were 1500 people there? A. No, sir; I did not.

Q. What did you say about 1500 people? A. I said that at a certain hour of the day there might be 1500 people.

Q. What hour of the day? A. Any hour of the day.

104 Q. At 8 o'clock, for instance? A. You can tell it just as well as I can; I am not trying to make a misrepresentation to this jury about the movement of these people, because I want to tell the truth, and I want them to know the truth. The business starts at five o'clock in the morning; cars go with com-

fortable loads from that time on; at two and three o'clock in the afternoon, there is perhaps double the number of people then moving in the direction of the Falls than there is at any other hour of the day or night.

Thinks if he said anything about 1500 people, 3 or 4 o'clock in the afternoon might have been the hour, but at 3 or 4 o'clock in the afternoon, they will commence to come back in full loads and that continues until evening; that continues until evening, until the time arrives when we don't have loads and we take trains into the Falls and hold them there waiting for any little rush that may occur; rush hours run from 4 to 6,—there might be one rush hour at any time; 500 people would make a rush hour; we can't tell as to that; but the people generally do not stay there late, especially Sunday nights; 100 people would not make rush hour, for allowing them to seat themselves and accommodate themselves would be a little more than would fill a car without there being any particular hurry to get away; we don't crowd people, but we are not allowed to refuse anybody permission to get on a car if they are in a safe place.

Q. You allow them to pack and jam themselves in as they see fit? A. If a man sees fit to take that car, we are not allowed by the law to say to him you must get off of this car.

Q. You don't attempt it? A. We do not attempt it for the reason it would simply put trouble on ourselves and on our employees, and we would have a damage suit against us; does not allow people to get on the cars and crowd them as much as they see fit—there is a limit to safety.

105 Q. And the limit to safety is when a car is packed and jammed? A. I am not saying what that limit is; they will make that limit themselves as to their own comfort, and we have no right to interfere with them; if we had interfered, we would have just what we are having here,—an injury and damage suit against us; we do everything we can to protect the public,—absolutely everything.

Allows the people to get on a car as they see fit up to a certain number—up to a certain loading of the car—could not give the number because in one instance it might be one number,—the number varies according to the way they load themselves.

Q. Do you not know that this loading capacity of your car stops only when that car is packed and jammed from beginning to end? A. We don't pack and jam it. A crowd of 5,000 people at the Falls would not make that platform insufficient or unsafe in any way, because they would not come at any one time, nor go out at any one time; the platform is not there with the idea that the people who are going to take the car will all go and line up on that platform, because there are only two points on the platform at which they can get on the car—one the front and one the back end of the car—people are desirous of getting on the cars at all hours.

Q. Then you time and time again have seen people pressing and pushing to get on these cars? A. I never saw any pushing and jostling of the kind you infer.

Q. Never saw anything of that sort? A. Nothing unusual; no, sir. The platform was an after consideration at the time; when we opened up there I considered what would be the best plan to adopt; when I was considering the gate, was not considering the platform at all; to provide a fence around that platform with a gate, through which so many people could be allowed to go as would take one of the cars, would make a perfectly safe place dangerous; 106 they could have extended the length or width of the platform.

Q. What was to prevent your inclosing that platform with a wire fence with a gate, so that you could control the number of people going on that platform? A. We never had a single accident during the whole life of this road except this one, and for that reason it was considered safe and I now so consider it. I can't provide against things that happen once perhaps in a hundred years.

If a fence were placed there, there would be absolutely no possibility to fall back on the approach of a car; the people pressing themselves against the fence would cause more or less the condition you are talking about; if by any chance the guard or anybody admitted a few too many, or not enough—we could not regulate the number that that guard would let in on that platform; does not know how many people the cars would take, and says it would be dangerous and cause a loss of patronage from which the Road would never recover if they had stationed a guard at such a gate, with instructions to admit to the platform just so many people as would fill up one of the cars; it would be the same rush for the gate that there would be otherwise, and when they got through the gate, there would be a run for the car; they would go on a run; there would be a rush at the gate to get over to the car; on the platform they are there by the car and was not rushing because they don't know where the car is going to stop; does not know whether there is any reason for the people back of those in front pushing to get on the car; have seen no demonstration of it; never saw anything of the kind there—that is no demonstration; does not look for individual movement from different people; wants to say along that line, too, that at Fort Myer, where they have as high as ten 107 thousand or twelve thousand people in the afternoon when they have flying machines out there, they have no gates or guards, or anything of that kind; they have different cars and they have no platform, and there are 10,000 allowed to swing down on those cars as fast as they want to in any afternoon while the flying machine is there.

108 Upon the close of all the testimony in the case the following instruction was asked on behalf of the plaintiff, and refused by the court, to which refusal exception was then and there taken and noted by the court upon its minutes.

II. You are instructed as a matter of law that it was the duty of the defendant railway company to have its platform reasonably sufficient and safe in all respects for the use of its plaintiff pas-

senger on August 25, 1907; if, therefore, you find from all the facts and circumstances in the case that said defendant railway company's station platform was not reasonably sufficient to safely accommodate the number of people allowed thereon at the time of the accident, and further find that because thereof said plaintiff passenger, without fault on her part, was injured, then she is entitled to your verdict.

Refused and Exception noted.

That next thereupon the defendant prayed the following instructions, which were allowed and granted over plaintiffs' objection and the exceptions then and there ~~were~~ made to each respectively, and duly noted by the court upon its minutes.

III. The jury are instructed as a matter of law that there is no evidence in this case establishing or tending to establish any negligence on the part of the defendant company in failing to provide lighting facilities to so light up its platform at Great Falls, Virginia, at the time plaintiff, Mary L. Dixon, received the injuries complained of herein, so as to render it reasonably safe for use by persons intending to become passengers upon its cars so as to be the proximate cause of Mrs. Dixon's injuries, and therefore they cannot find that the injuries sustained by said plaintiff were the result of any such alleged negligence of the defendant.

Granted over Plaintiffs' objection and Exception.

VI. The jury are instructed as a matter of law that the burden of establishing negligence on the part of the defendant as alleged by the plaintiffs, is upon the plaintiffs, and that if the testimony in these cases should be such as to leave the minds of the jury in a state of equipoise, as to negligence of the defendant, their verdict should be for the defendant.

Granted over Plaintiffs' objection and Exception.

109 VII. The jury are instructed as a matter of law that if they find that the defendant was guilty of negligence which was the proximate cause of the injuries sustained by the plaintiff, Mary L. Dixon, yet if they further find that the said plaintiff was guilty of negligence which contributed to her said injuries, their verdict should be for the defendant.

Granted over plaintiffs' objection and Exception.

110

Charge.

The COURT (Mr. Justice BARNARD): Gentlemen of the jury, these actions, as you are aware now, have been tried twice before, so that this becomes the third trial that has been gone into before a court and jury to settle this litigation. I speak of that only so that you may give the case as fair a consideration as is possible for you to give in order that you may arrive at a true settlement of it. Reach a conclusion in accordance with the facts, if you possibly can, in adjusting the case.

The whole case depends, of course, upon the charge and proof as to the negligence on the part of the defendant, in the first instance. Has this company been guilty of negligence for which cause of ac-

tion would accrue to the plaintiffs? Of course, in going into that question, you will have to consider the charge of negligence that is averred in the declarations. There has been some comment made about the first declaration making a charge of negligence in a certain way, and then the amended declaration, on which the cases are now being tried, perhaps leaving out some of those statements and making the charge in a little different way. The proof must satisfy your minds in some way satisfactory that the charge made in the declarations, that these acts of negligence actually existed in substantially the way they are charged, that they are true. There need not be all those acts of negligence, because these declarations undertake to set out a great many different acts of negligence. But there must be proof of some of the acts of negligence that are charged in the declarations that caused the accident, that became the proximate cause of the accident, before a recovery could be had. So that your first consideration would be, of course, to determine whether or not this defendant is guilty of negligence. If, under all the circumstances and all the facts proven in the case you find that the defendant has exercised that reasonable care that should be exercised by a railroad company, or by any person in the circumstances of this company, everything that a reasonable man would have done in anticipation of any injury of this kind, and has not been guilty of neglecting anything that a reasonable man should have done, then, of course, you could not find the defendant guilty; it would have then discharged its duty to the community in exercising that reasonable care that is required of every one. The plaintiff, Mrs. Mary L. Dixon, was a passenger; she was there at that station to take the car, and come home again, and, of course, the company was bound to exercise that reasonable care that all the circumstances required. Now, did it exercise that care? That is the first question for you to vote upon and determine, whether or not you should return a verdict here for the plaintiffs by reason of the negligence of the defendant.

The acts of negligence charged here in the declarations are these, "that said plaintiff waited for a car about fifteen or twenty minutes, all the time the crowd increasing in and about said station platform, until finally some in the crowd commenced to jostle and push about; that some person or persons called out that the car was coming, whereupon there was a rush and a number of those waiting for said car in the rear tried to shove to the front, whereby said plaintiff, who was herself in the front part of said station platform, and who was in the exercise of due care, and without negligence on her part, was pushed and shoved in such manner as that she was jostled, pushed and thrown violently from the top of this station platform on her stomach, and being a very heavy woman," suffered this injury, etc.

Those are the allegations of negligence that are complained of. Negligence, to be actionable, so as to constitute a cause of action, is such an omission by a responsible person to use that degree of care, diligence, and skill which it was his legal duty to use for the protection of another person from injury, as, in a natural and

continuous sequence, causes unintended damage to the latter. It is the unintentional failure to perform a duty implied or expressly enjoined by law, whereby damage naturally and proximately results to another. It is the failure to do what a reasonable and prudent person would ordinarily have done under the circumstances of the situation, or doing what such a person under the existing circumstances would not have done. The defendant is not liable
111 in damages for negligence where no injurious consequences could reasonably have been contemplated as a result of the act or omission complained of.

The defendant here has undertaken to show that the plaintiff, Mary L. Dixon, if injured by the negligence of the defendant, was also injured by her own negligence; in other words, that she was negligent in going into that crowd and going on to that platform and expecting that crowd not to push or shove in trying to get into those cars when they came up there. The evidence clearly shows that that platform was put up there for the purpose of enabling these people to get into the car. It also shows that there were only two places where they could get into a car after it came to a stop, at the front and at the rear of the car. The people standing on the platform at other places would not have any advantage by being on the platform, and it was a question whether it was their duty to stand up there on that platform, particularly as it was dangerous, as they say it was—high, and all that,—whether they should stand up there and not expect to be shoved and pushed about by the crowd coming in when the car was coming in. Those are the facts that the defendant has called to your attention to show that the plaintiff herself was not free from negligence in the premises.

The law about contributory negligence is this: If the plaintiff, by the exercise of ordinary care under the circumstances, might have avoided the consequences of the defendant's negligence, but did not, the case is one of mutual fault, and the law will neither cast all the consequences on the defendant nor will it attempt any apportionment of them. In such a case, the negligence of the plaintiff having contributed to the injury, the plaintiff cannot recover, the fault being that of the plaintiff, as well as that of the defendant. That is in a case where you find negligence on the part of both of these parties, the plaintiff and the defendant, then there can be no recovery, because you cannot tell which contributed most to the injury, whether it was the plaintiff's negligence or whether the defendant's negligence. If they are both guilty of the negligence that contributed to the injury, then the law leaves them just where they were, that each party is supposed to have done something in a negligent way that contributed to the injury, and neither can recover against the other.

Upon consideration of all the surrounding circumstances of this case the jury should determine whether the defendant exercised reasonable care in the premises, and if the defendant, in the conduct of its business as a common carrier of passengers, under all the conditions of this case, has shown by the evidence that it used that care that a reasonable and prudent man would have used under

similar circumstances, then, of course, your verdict would be for the defendant.

I do not know that I need spend any further time in a general statement of the law. You have two cases. If you find for the plaintiff in the first case, the case of the wife, then you can find for the plaintiff in the second case, the case of the husband because his case depends entirely on your finding in the first case, that of his wife. If there was negligence on the part of the company that resulted in this accident, that caused this injury, and no contributory negligence on the part of the plaintiff, Mary L. Dixon, then your verdict would be for the plaintiff, Mary L. Dixon, and you would then proceed to the next step and assess the damages for her in that case, and then assess the damages for the plaintiff in the second case; so that your verdict would be for the plaintiff in each case, and you would find separate amounts. Of course the amounts could not or would not necessarily be anywhere near the same, because the same cause of action is not set out. The husband is entitled to recover for the money he has spent and for the money he has lost by reason of the injury to his wife, if he has lost any money on that account; and the wife is entitled to recover for the suffering she has undergone, and for the suffering she will undergo, and for the disability she has incurred. I have stated the law in granting the prayers of the plaintiffs and the defendant, succinctly, and with this general statement of the cases I think you gentlemen will be able to appreciate the law, and apply the facts of the case as you may determine they should be applied in order to reach a correct conclusion in this case.

112

(Plaintiffs' First Prayer.)

"You are instructed as a matter of law that the plaintiff, Mary L. Dixon, was a passenger when standing on the defendant railway company's station platform at Great Falls, and as such passenger was entitled to the highest degree of care for her safety and protection from hurt or injury; and if you find that while such a passenger she was injured by being pushed off said defendant railway company's platform, by reason of the failure on the part of the said defendant company to exercise such care and protection, under all the facts and circumstances of the case, your verdict should be for the plaintiff."

(Plaintiffs' Third Prayer.)

"You are instructed that the burden of proving contributory negligence on the part of the plaintiff, is imposed by law upon the defendant railway company, and in order to relieve itself from liability upon the ground of such contributory negligence, it must show you by a preponderance of the evidence that the plaintiff's injuries were caused by her own negligence."

That is to be taken into consideration with what I have already said, that her negligence must have contributed to the accident.

(Plaintiffs' Fourth Prayer.)

"You are instructed that if you find from the evidence that the plaintiff immediately after she was hurt made statements in relation thereto at variance with her testimony given in this case, and you further find that at the time of making the former statements she was suffering from shock and pain, you are to look at the difference of the statements from the point of view of her condition when making each, and to consider what effect the shock and pain from which she was suffering, if she was so suffering when she made the former statements, may have had on her ability to correctly ascribe the true cause of the accident."

(Plaintiffs' Fifth Prayer.)

"You are instructed that if you find for the plaintiff, you are to consider in estimating the damages the injuries to the plaintiff, and the damages resulting therefrom to her. You are to take into consideration the sufferings, including bodily pain in consequence of such injuries, and also the mental pain and suffering attendant upon and the natural incident of such bodily suffering, the character and extent of her physical disabilities, and whether the injuries are permanent or otherwise, and you should award such damages within the limits of the sum claimed in the declaration, as will fairly and reasonably compensate the plaintiff for the personal injuries suffered by her."

One word about the meaning of that word "compensate". As you perhaps are all aware, there are two kinds of damages that are awarded in certain cases. The jury is allowed to assess damages to compensate a plaintiff for the actual loss sustained by reason of the wrong or tort of the defendant, and also in certain cases where malicious injuries have been inflicted, to award punitive damages; that is, damages to punish the defendant for doing a malicious act. In this case there is no pretense that there are any punitive damages to be allowed. There is not any pretense that the company wanted to inflict any injury on one of its passengers, or do any harm up there. So there is no claim of that. The whole claim is for compensatory damages, that is, dollars and cents, so far as you can measure the injuries by dollars and cents, not for any punishment, but simply to compensate the plaintiff for any injury and loss sustained.

* * * * *

(After further instructing as to the measure of damages.) On behalf of the defendant I have granted these prayers, which state the law of the case, so far as your action should be concerned, because you are to take the law from the Court, whether the court is wrong or right about it. The only way of trying a case is for the Court to be responsible for the law, and the jury responsible

for the facts. So I say this is the law of this case, that is, as I am giving it now, the prayers I have just read, and these prayers I am going to read:

113 "The jury are instructed, as a matter of law, that there is no evidence in this case establishing or tending to establish, any negligence on the part of the defendant company in failing to provide lighting facilities to so light up its platform at Great Falls, Virginia, at the time plaintiff, Mary L. Dixon, received the injuries complained of herein, so as to render it reasonably safe for use by persons intending to become passengers upon its cars, so as to be the proximate cause of Mrs. Dixon's injuries and therefore they cannot find that the injuries sustained by said plaintiff were the result of any such alleged negligence of the defendant."

Taking the evidence all together, it shows that that platform was reasonably lighted, that there were reasonable lights up there, the two large arc lights, and the other incandescent lights that were back there. Taking all the evidence together, I say, it does not, in law, sustain the charge of negligence by reason of that fact alone, that one item, want of light there. The charge is made in the declaration that that is one of the causes which produced injury. But the evidence does not sustain that. So I have directed you not to pay any attention to that part of it.

"The jury are instructed as a matter of law, that before they can find for the plaintiffs, they must find by a preponderance of the evidence not only that the plaintiff, Mary L. Dixon, was pushed and shoved in such a manner as that she was jostled, pushed or thrown violently from the top of the station platform but they must also find as a fact that the defendant was guilty of negligence in maintaining the platform described in these cases, or that on this occasion there was present on said platform a crowd of people that should and could have been controlled or regulated by the employees of the defendant, and that the said defendant did not furnish a sufficient number of competent employees to control or regulate said people, and that its failure to do so was negligence on its part, which was the proximate cause of the injuries sustained by the plaintiff, Mary L. Dixon."

"The jury are instructed as matter of law that no presumption of negligence arises against the defendant from the happening of the accident in question; that the burden of proof rests upon the plaintiffs to show to the jury by a preponderance of the evidence that the defendant was in fact guilty of negligence on the occasion in question, and that such negligence was the proximate cause of the injuries complained of by the plaintiff, Mary L. Dixon."

"The jury are instructed as matter of law that the burden of establishing negligence on the part of the defendant as alleged by the plaintiffs is upon the plaintiffs, and that if the testimony in these cases should be such as to leave the minds of the jury in a state of equipoise, as to negligence of the defendant, their verdict should be for the defendant."

"The jury are instructed as matter of law that if they find that the defendant was guilty of negligence which was the proximate

cause of the injuries sustained by the plaintiff, Mary L. Dixon, yet, if they further find that the said plaintiff was guilty of negligence which contributed to her said injuries, their verdict should be for the defendant."

"The jury are instructed as matter of law that if they find from the weight of the evidence that the plaintiff was standing on the platform of defendant company at Great Falls, Virginia, and that she saw, or could have seen by the exercise of ordinary care and diligence that the said platform was elevated above the grade of the road bed, and nevertheless, of her own accord, attempted to step off or beyond the limits of said platform, and in so doing received the injuries complained of in the case, then their verdict should be for the defendant."

114 "The jury are instructed that in weighing the testimony they should especially look to the interest which the respective witnesses have in the suit and its result. Where the witness has a direct personal interest in the result of a suit, the temptation is strong to color, pervert or withhold the facts."

"The jury are instructed as a matter of law that the fact that the defendant in these cases is a public service corporation should not influence them for or against said defendant in weighing the testimony given herein and arriving at their verdict. In other words, the rights of the defendant herein are in nowise different from those of an individual defendant, and the jurors would be violating their oaths as officers of this court and jurors in these cases if they permit the fact that the defendant is a public service corporation to influence them in their consideration of these cases for or against said defendant."

"The jury are instructed as matter of law that the fact that one of the plaintiffs in these cases is a woman and received the injuries complained of herein, should not influence them in their consideration of the testimony and in their verdict to be rendered herein; that they are to view the testimony and weigh the same in a calm, dispassionate manner, free from sympathy or prejudice, and render their verdict upon all of the evidence herein."

In other words, you should be entirely impersonal in reaching a conclusion in the case. It does not make any difference whether it is a corporation on one side and a lady on the other, or two men, one on one side and one on the other. You are simply to look at the facts, and see where liability lies, or whether a case is made out or not. You should be entirely impersonal.

"The jury are instructed as matter of law that they are the sole judges of the credibility of the witnesses; that inconsistencies in the testimony of witnesses in reference to immaterial matters, do not, as matter of law, discredit witnesses; the jury are to weigh all the evidence of the witnesses, together with all the circumstances surrounding the giving of same, and give such credence to the respective witnesses as they deem proper."

"The jury are instructed that the defendant, as a common carrier, is not an insurer of the safety of its passengers, and is not liable

for the injuries sustained by a passenger unless it be shown, by a preponderance of the evidence, to have been guilty of negligence."

Now I think that is all I need to say to you gentlemen. Take the cases, give them fair consideration, and return your verdicts with the declarations.

Mr. MATHER: Before the jury retires, your Honor, I desire to renew the exceptions taken to the defendant's prayers, and also to the use of this plat throughout the trial.

The COURT: Very well.

115 Mr. LAMBERT: No exceptions except to the refusal of the prayers.

And thereupon, after each and all of the exceptions were duly taken as aforesaid, and entered upon the minutes of the court before verdict given and before the jury retired, counsel for the plaintiffs then and there prayed the court to sign and seal these Bills of Exceptions, and at the request of said counsel for the plaintiffs the same is accordingly signed and made a part of the record in these cases nunc pro tunc this 5th day of June, 1914.

JOB BARNARD, *Justice*.

[Endorsed:] Law. Nos 50653, 52293. Mary L. Dixon, Pl'ff, vs. Great Falls & Old Dominion Railway Company, Def't. Robert A. Dixon, Pl'ff, vs. Great Falls & Old Dominion Railway Company, Def't. Bills of Exceptions.

Endorsed on cover: District of Columbia Supreme Court. No. 2713. Mary L. Dixon, appellant, vs. Great Falls and Old Dominion Railway Company, a corporation; and No. 2714. Robert A. Dixon, appellant, vs. Great Falls and Old Dominion Railway Company, a corporation. Court of Appeals, District of Columbia. Filed Jun-27, 1914. Henry W. Hodges, clerk.